

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-008565
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 01, 2014
County: OTTAWA (DISTRICT 70)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on December 1, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an over issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on August 1, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FAP program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report income from employment for all household members in the FAP group.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is April 2012 through December 2012 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to

MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, **or**
 - the total OI amount is less than \$1000, **and**
 - the group has a previous IPV, **or**
 - the alleged IPV involves FAP trafficking, **or**
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), **or**
 - the alleged fraud is committed by a state/government employee.

BAM 720 (12/1/11), p. 10.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (12/1/11), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department seeks an Intentional Program Violation due to the Respondent's alleged failure to report when the FAP group income received by the group exceeded the simplified reporting limit of [REDACTED]. The proofs presented demonstrate that the Respondent applied for FAP benefits on February 7, 2012 and reported that Respondent and her spouse were working, that her spouse was also receiving unemployment, and their son was in the home and not working. Exhibit 1, pp. 25. A Notice of Case Action dated February 15, 2012 was sent to Respondent indicating that at the time the FAP benefits were issued they were based upon reported income of [REDACTED] (earned) and unearned income of [REDACTED]. The Notice also advised: "Effective the date of this notice, the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW. [REDACTED]." Exhibit 1, pp 35.

The proofs also demonstrated that at the time of Respondent's application, she was employed by a dental practice and did not report the employment and the gross income for January 2012 of [REDACTED], which may have in fact caused her to be ineligible. This omission demonstrates that from the beginning the Respondent misreported ongoing significant earned income from employment. Exhibit 1 p. 51.

Thereafter, the evidence presented indicates that the Respondent completed the Semi Annual Contact Report on June 1, 2012, at which time she reported no change in the group size and did not complete the section to confirm that the household's monthly gross income earned before taxes in the amount of [REDACTED] was correct, and that there had been no change in earnings. Exhibit 1 p. 42. The Department's evidence further presented budgets which established that the Respondent beginning in April 2012 (prior to the Semi Annual Contact Report), received unreported income which caused them to exceed the simplified reporting limit of [REDACTED] and also exceeded the [REDACTED] of earned income that the Department was using at the time of the Semi Annual Contact Report completed by Respondent. Prior to April 2012, the Respondent was employed by North Park Dental and had unreported income discussed above, and in April 2012, income of [REDACTED]. In addition, the Respondent's son, a FAP group member, had unreported earned income of [REDACTED] in April 2012. Clearly, the Respondent did not report this additional and significant earned income on her Semi Annual Contact Report. The Department presented Food Assistance budgets for the entire over issuance fraud period, and its proofs clearly demonstrated that month after month, through December 2012, the Respondent failed to report the North Park Dental income she received or any of her son's income. The failure to report this additional income caused the Department

to issue to the Respondent more Food Assistance benefits than she was otherwise entitled to receive.

Based upon the evidence presented, the Department has demonstrated by clear and convincing evidence that the Respondent's failure to report the income that was not previously reported, and that was omitted from the Semi Annual Contact Report, was an intentional omission by the Respondent so that she could continue to receive Food Assistance benefits she was not otherwise entitled to receive, and demonstrated an Intentional Program Violation.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (10/1/09), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, the Department demonstrated by clear and convincing evidence that an intentional program violation was committed and, therefore, is entitled to a finding of disqualification of the Respondent from receipt of Food Assistance for a one-year period.

Over Issuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (12/1/11) p. 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8;

In this case, the Department's evidence by way of budgets covering the months of April 2012 through December 2012 demonstrated that due to unreported earned income, the Respondent received an over issuance of [REDACTED] in Food Assistance benefits. During the hearing, the budgets were reviewed as well as the earnings, based upon verifications received regarding unreported income from unreported employment. Based upon this review, the Department demonstrated that its calculation of the over issuance amount during the fraud period was correct. Therefore, the Department is entitled to a finding of an over issuance in the amount of [REDACTED]

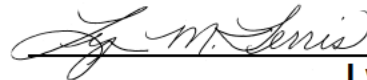
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the following program: FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/4/2014**
Date Mailed: **12/4/2014**
LMF/tm

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

