

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

IN THE MATTER OF:

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Reg. No.: 14-008793
Issue No.: 3005
Case No.: ██████████
Hearing Date: December 3, 2014
County: SHIAWASSEE

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 3, 2014, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: Respondent, ██████████).

ISSUES

1. Did Respondent receive an overissuance (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 5, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in income.
5. Respondent had 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 August 1, 2009, to October 31, 2009 (fraud period).
7. During the fraud period, Respondent was issued \$1,068 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,068.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 (May 2014), pp. 12-13.

As a preliminary matter, Respondent argued that she had a previous OI amount that she had recently paid off as of last year. Respondent believed that the current OI in which the Department seeks is related to the one she recently paid off. However, the Department presented Claimant's Claim Search document, which indicated a previous OI amount based on agency error. See Exhibit 1, p. 38. The evidence indicated this OI amount was for the time period of April 1, 2007, to September 30, 2007, for the amount of \$1,860. See Exhibit 1, p. 38. The evidence also showed that there is no outstanding balance for the agency error OI amount.

Based on the above information and evidence, the IPV hearing proceeded properly. Respondent's previous OI amount is unrelated to the current matter. Respondent's previous OI amount is for a time period in 2007, whereas the current alleged OI amount is for a time period in 2009. As such, the IPV hearing proceeded as scheduled.

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 (May 2014), p. 7; 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 alleges that Respondent, who is a food assistance simplified reporter, committed an IPV of her FAP benefits because she failed to report the income exceeding the reporting limits, which caused an overissuance of FAP benefits.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (August 2008 and October 2009), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 1. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 1. Respondent's applicable group size in this case is three. Effective October 1, 2008, RFT 250 indicates that the simplified reporting income limit for a group size of three is \$1,907. RFT 250 (October 2008), p. 1. Effective October 1, 2009, RFT 250 indicates that the simplified reporting income limit for a group size of three is \$1,984. RFT 250 (October 2009), p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2009, to October 31, 2009. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report the income exceeding the reporting limits and that she intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, the Department presented Respondent's application dated January 7, 2009, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 10-25.

Second, the Department presented Respondent's Notice of Case Action dated July 9, 2009, which notified her of the ongoing obligation to report to the Department if her household's monthly gross income exceeded the simplified reporting limit of \$1,907 (group size of three). Exhibit 1, pp. 26-31.

Third, the Department presented Respondent's group member's income verification. See Exhibit 1, pp. 32-33.

At the hearing, Respondent argued that she did not intentionally withhold information regarding her ex-husband's income for the purpose of maintaining Michigan FAP eligibility. Respondent testified that possibly in error she forgot to notify the Department of the income exceeding the reporting limits.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

First, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld information. The Department presented Respondent's application and Notice of Case Action; however, this was before the alleged fraud period. See Exhibit 1, pp. 10-31.

Second, Respondent credibly testified that she did not intentionally withhold her ex-husband's income information for the purpose of maintaining Michigan FAP eligibility. Even though the income verification shows the ex-husband's income exceeding the SR limits, Respondent credibly testified that he did not intentionally withhold any information.

Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), 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. 16.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report a change in earned income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

Additionally, the only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, pp. 4 and 5. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 4 and 5. Groups report if their actual income for a month exceeds 130 percent of poverty level. BAM 200, pp. 4 and 5. SR does not affect client errors that occur at application and redetermination. BAM 200, pp. 4 and 5. SR does not affect the determination of agency error overissuances. BAM 200, pp. 4 and 5.

A client error is present in this situation because the evidence presented that Respondent failed to report that her FAP group's income exceeded the SR income limits. See BAM 200, pp. 1 and 5 and BAM 715, p. 1.

The Department determines the first month of the overissuance as two months after the actual monthly income exceeded the simplified reporting (SR) limit. BAM 715, p. 5. This accounts for the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period. BAM 715, p. 5. If the income falls below the income limit any time during these two months and does not exceed the income limit again during the certification period, recoupment is not necessary. BAM 715, p. 5. If it does exceed the income limit again during the certification period and the client does not report, all months that exceeded the limit after the first two months would be recouped. BAM 715, p. 5.

Moreover, the evidence indicated that Respondent was a simplified reporter and that the FAP group's income had actually exceeded the SR income reporting limits for June and July of 2009. See Exhibit 1, p. 32 and see RFT 250 (October 2008), p. 1. As such, the Department properly determined that the OI period began on August 1, 2009. See Exhibit 1, p. 4 and see BAM 715, pp. 4-5.

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In this case, the Department presented OI budgets for August 2009 to October 2009. See Exhibit 1, pp. 35-37. The budgets included the ex-husband's income verification. See Exhibit 1, pp. 32-33. A review of the OI budgets for August 2009 to October 2009 found them to be fair and correct. See BAM 715, p. 5. Thus, the Department is entitled to recoup \$1,068 of FAP benefits for the time period of August 1, 2009 to October 31, 2009. See Exhibit 1, pp. 34-37.

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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$1,068 from the following program(s) FIP FAP SDA CDC MA.

