

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

IN THE MATTER OF:



Reg. No.: 14-008996
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: January 22, 2015
County: IONIA

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 three way telephone hearing was held on January 22, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Amy Benjamin.

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 11, 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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report any household changes, including changes with income, to the Department.
5. Respondent did not have an apparent physical or mental impairment that would limit 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, 2012, to March 31, 2013, (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 \$ [REDACTED] 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 second 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:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1000 or more, **or**
 - The total 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 (5-1-2014), pp. 12-13.

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 (5-1-2014), 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 has established that Respondent was aware of the responsibility to timely and accurately report to the Department all household changes, including changes with income. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days of receiving the first payment reflecting the change. BAM 105 (5-1-2012) p. 7. Respondent's signature on the May 2, 2012, Assistance Application in this record certifies that she was aware of the change reporting responsibilities and that fraudulent participation in FAP could result in criminal or civil or administrative claims. Further, the May 2, 2012, Notice of Case Action stating Respondent was approved for FAP reiterated the responsibility to report changes and a blank Change Report form was included.

The Department submitted employment records documenting that Respondent began employment in May 2012. The Department asserted that there is no evidence showing Respondent timely reported her change in income to the Department within 10 days as required per policy. Rather, when a computer cross match indicated Respondent had new employment, the Department issued a Wage Match Client Notice to Respondent on February 1, 2013, requesting verification of the employment and income. Accordingly, the Department asserted that Respondent committed an IPV.

Respondent testified she called her Department Caseworker when she started work and explained that there were no paystubs. Respondent did not recall the Caseworker's response, but noted she was battling a drug addiction at that time. The OIG Regulation testified that the Department's records did not include any documentation of this phone conversation.

Respondent testified that she had to fill out a form through the employer letting them know she was receiving FAP, including her case number and caseworker's name. Respondent also noted she was homeless during this time period. Respondent recalled that at one point she got a reevaluation form from the Department, but by the time Respondent received the form, the timeframe to respond had already passed. However, Respondent's testimony acknowledged that the Department mailed the form requesting additional information to the mailing address she had provided.

Lastly, Respondent noted that for the first alleged IPV she was found not to be at fault. However, Respondent did not bring any documentation with her to verify that she was found not to be at fault for the first IPV by a District Court Judge. Additionally, this ALJ has no jurisdiction to review the prior IPV.

Overall, the evidence shows that Respondent was aware of her responsibility to report changes with income to the Department and she had no physical or mental impairment that limited her understanding or ability to fulfill these reporting responsibilities.

Respondent's testimony that she called the Department Caseworker when the employment began cannot be found fully credible as Respondent could not recall what the Caseworker told her to do about not having any paystubs to verify the employment and earnings and there was no other evidence to support this testimony, such as a note of the conversation in the Department's case record. Additionally, even if Respondent let the employer know she received FAP, this would not be sufficient to fulfill her responsibility to timely report income changes to the Department. There was not sufficient credible evidence to establish that Respondent timely reported her change in income to the Department within 10 days as required per policy. The Department has established the Respondent committed an IPV by clear and convincing evidence.

Disqualification

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

As noted above, Respondent testified that she was found not to be at fault for the first alleged IPV. However, Respondent did not bring any documentation with her to verify that she was found not to be at fault for the first IPV by a District Court Judge. Additionally, this ALJ has no jurisdiction to review the prior IPV.

In this case, the evidence of record shows that Respondent committed a FAP IPV. Therefore, Respondent is subject to disqualification in accordance with Department policy.

Overissuance

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.

In this case, the evidence of record shows that during the above-mentioned fraud period, Respondent received an OI of FAP benefits 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 received an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

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 in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/10/2015**

Date Mailed: **3/10/2015**

CL/hj

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:

