

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

IN THE MATTER OF:

██████████
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Reg. No.: 14-009096
Issue No.: 3005
Case No.: ██████████
Hearing Date: May 11, 2015
County: ROSCOMMON

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on May 11, 2015, from Detroit, Michigan. The Department was represented by ██████████, 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 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 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 21, 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 changes in earned income.
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 FAP fraud period is June 1, 2011 to February 29, 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 [REDACTED] 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) 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.

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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (June 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to timely report her employment and wages to the Department, which caused an overissuance of FAP benefits. The Department alleged that Respondent failed to timely report her return to work after her medical leave. See Exhibit 1, p. 1.

First, the Department presented Respondent's application dated March 2, 2011, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 10-29 and 31-34 (Notice of Case Action dated March 7, 2011). In the application, Respondent reported that she was on medical leave from her employer and there are notes which appeared to indicate that she hoped to be back to work in seven weeks. See Exhibit 1, p. 21.

Second, the Department presented Respondent's redetermination dated March 5, 2012, which the Department argued she first reported that she returned to work. See Exhibit 1, pp. 35-38. In the redetermination, the DHHS caseworker notated that Respondent had gone back to work on November 30, 2011, even though the evidence indicated Respondent went back to work on or around April 21, 2011 (seven month difference). See Exhibit 1, pp. 35-51.

Third, the Department provided Respondent's wage verification dated July 25, 2013 and her employment pay stubs received on July 29, 2013. See Exhibit 1, pp. 39-52. The employment verification showed that she received wages from April 21, 2011 to on or around February 23, 2012. See Exhibit 1, pp. 40-51.

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

First, the Department presented Respondent's redetermination received on March 5, 2012, which she reported her employment income. See Exhibit 1, pp. 35-38. It is understandable that this redetermination shows her earnings were untimely reported. See BAM 105, p. 7. However, this evidence actually shows that the Respondent eventually reported her employment information and does not show that she intentionally withheld or misrepresented the income information.

Second, an issue does arise in Respondent's redetermination because the DHHS caseworker notated that Respondent had gone back to work on November 30, 2011, even though the evidence indicated Respondent went back to work in April of 2011 (seven month difference). See Exhibit 1, pp. 35-51. Therefore, the Department argued that the employment verification disproves Respondent's statement that she returned to work on November 30, 2011. See Exhibit 1, p. 9. However, Respondent's initial application dated March 2, 2011, indicated that she hoped to be back to work in seven weeks. See Exhibit 1, p. 21. In fact, Respondent returned to work on or around April of 2011, which is approximately seven weeks as stated in her application. See Exhibit 1, pp. 40-51. Respondent's redetermination indicated the improper time period in which she returned to work; however, the application accurately provided her return back to work. Thus, this evidence does not show by clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information because she technically reported it.

In summary, there is persuasive evidence that Respondent did not report the income within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. However, 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 client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report 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.

A client error is present in this situation because Respondent failed to notify the Department of her earned income timely. Based on this information, it is persuasive evidence that an OI is present due to client error.

Applying the overissuance period standards and in consideration of the Respondent receiving the income on April 21, 2011, the Department determined that the OI period began on June 1, 2011. See Exhibit 1, pp. 4 and 40. It is found that the Department applied the appropriate OI begin date. 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 June 2011 to February 2012. See Exhibit 1, pp. 58-66. The budgets included Respondent's income that was not previously reported from the employer's verification. See Exhibit 1, pp. 39-52. A review of the OI budgets for June 2011 to February 2012 found them to be fair and correct. See BAM 715, p. 8. Thus, the Department established an OI amount of [REDACTED] for the period of June 1, 2011 to February 29, 2012.

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 not** 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 FAP benefits.

