

**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.: 14-010190
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 13, 2015
County: INGHAM

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on April 13, 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 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 September 2, 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 a group member leaving the household and to report all 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 fraud period is June 1, 2011 to May 31, 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] 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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Health and Human Services Program Administrative Manuals (PAM), Department of Health and Human Services Program Eligibility Manual (PEM), and Department of Health and 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.

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. The Department verifies income that stopped within the 30 days prior to the application date or while the application is pending before certifying the Eligibility Determination Group (EDG). BEM 505 (October 2010), p. 11.

It also appeared that Respondent was a simplified reporter. See Exhibit 1, p. 57. Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (January 2011), 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 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. RFT 250 indicates that the simplified reporting income limit for a group size of two is \$1,597 and one is \$1,174. RFT 250 (October 2010), p. 1.

Additionally, other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home. BAM 105, p. 7. For FAP group composition, living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212 (September 2010), p. 2. A person who is temporarily absent from the group is considered living with the group. BEM 212, p. 2. However, the absence is temporary if it has lasted or is expected to last 30 days or less. BEM 212, p. 2. Also, a person in a federal, state or local correctional

facility for more than 30 days is not eligible to receive FAP benefits. BAM 804 (October 2008), p. 1.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report her son (a FAP group member) leaving the household and her employment and wages to the Department, which caused an overissuance of FAP benefits.

First, the Department presented Respondent's application dated March 11, 2011, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 11-29.

Second, the Department presented Respondent's application dated April 10, 2012, which was submitted during the alleged fraud period. See Exhibit 1, pp. 30-53. In this application, Respondent indicated that the FAP group size is one and did not include her son. See Exhibit 1, pp. 32-33. Moreover, Respondent did not report any employment earnings or changes in employment in the last 30 days. See Exhibit 1, pp. 42-44. It should be noted that the DHHS caseworker appeared to make some notes/questions to ask the Respondent for most likely her FAP telephone interview. See Exhibit 1, p. 53. These notes/questions included whether her son is still in the home because he moved out in November 2011 due to being in jail and did she receive earned income from April 2011 to December 2011 (employer at issue). See Exhibit 1, p. 53.

Third, the Department presented Respondent's employment verification received on October 12, 2012, which confirmed she was employed from April 18, 2011 to April 10, 2012. See Exhibit 1, pp. 54-55. The employment verification indicated she received wages from April 28, 2011 to April 12, 2012. See Exhibit 1, p. 55.

Fourth, the Department presented a Department documentation record dated April 16, 2014, in which the OIG agent spoke with a probation/parole agent. See Exhibit 1, p. 83. The probation/parole agent reported that Respondent's son was either incarcerated or in boot camp from November 16, 2011 to July 23, 2013 and he is currently living with his mother (Respondent). See Exhibit 1, p. 83.

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

First, a review of the evidence packet discovered that Respondent actually reported her earned income before the April 2012 application. A DHHS caseworker, most likely a Recoupment Specialist (RS), indicated that Respondent mistated the status of her earned income on a redetermination dated July 26, 2011. See Exhibit 1, p. 57. But, the Department failed to present this redetermination as part of the evidence. This evidence is persuasive that Respondent did not report her earned income timely and/or properly. However, it does not show that the Respondent intentionally withheld or

misrepresented her income information because she did eventually report her income to the Department. See Exhibit 1, p. 57.

Second, this same analysis above can be also applied towards Respondent reporting her group size. Again, it is persuasive evidence that Respondent did not report her son leaving the household timely. However, Respondent eventually notified the Department that her group size is one in the application dated April 2012. See Exhibit 1, pp. 32-33. Based on this information, Respondent did not intentionally withheld or misrepresent the FAP group composition as she eventually reported it to the Department.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld her income information/group composition for the purpose of maintaining Michigan FAP 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/group composition in order to continue receiving FAP benefits from Michigan. 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 the evidence presented that Respondent failed to report that her earned income timely and/or that it exceeded the SR income limits, and that her son left the household. See BAM 200, pp. 1 and 5 and BAM 715, p. 1.

Applying the OI begin date policy, it is found that the OI period began on June 1, 2011. See BAM 715, pp. 4-5. 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 regard to Respondent's FAP benefits, the Department presented OI budgets for the time period of June 2011 to May 2012. See Exhibit 1, pp. 57-82. Monthly budgets were provided for the FAP programs using the submitted employer's documents and excluding Respondent's son from the FAP group. See Exhibit 1, pp. 54-55. A review of the OI budgets found them to be fair and correct. The Department established that the overissuance for FAP benefits was [REDACTED] for the time period of June 1, 2011 to May 31, 2012. Thus, the Department is entitled to recoup [REDACTED] in FAP benefits.

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.

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



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human
Services

Date Signed: **4/14/2015**

Date Mailed: **4/14/2015**

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