

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 group composition and 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 April 1, 2013 to September 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued ██████ 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 ██████
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 (March 2013), 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.

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. See BAM 105, p. 7.

Additionally, BEM 212 outlines the process in which the Department will help determine who must be included in the FAP group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212 (November 2012), p. 1. FAP group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation.

BEM 212, p. 1.

Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

Finally, the primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 1. 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, p. 2. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212, p. 1. BEM 212 offers further policy guidance as to determining who is the primary

caretaker. BEM 212, pp. 3-4 and 8-10. Persons might live with the FAP group or applicant group who are not group members. BEM 212, p. 7. The Department does not consider their income and assets when determining the group's eligibility. BEM 212, p. 7 and BEM 550 (February 2012), p. 2 (the income of a non-group member is excluded).

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report that the children's father lived in the home and that the father had employment and wages to the Department, which caused an overissuance of FAP benefits. Therefore, the Department alleged the total FAP group composition should have been five (Respondent, two children (related to the father), unrelated child, and the father). It should be noted that it was discovered during the hearing that Respondent and the father are now married. However, the undersigned will refer to Respondent's husband as "the father" because at the time of the alleged fraud period, he was only the father of the twin children.

First, the Department presented Respondent's application dated February 25, 2013, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 29-52.

Second, the Department presented a Children's Protective Services (CPS) letter dated September 30, 2014. See Exhibit A, p. 53. The letter indicated that the father resided in the home with the Respondent on a "part-time basis at minimum." See Exhibit A, p. 53.

Third, the Department presented a semi-annual contact report (contact report) received on July 25, 2013, which was submitted during the alleged fraud period. See Exhibit A, pp. 54-55. In the contact report, Respondent did not report the father in the home nor his income. See Exhibit A, pp. 54-55.

Fourth, the Department presented a Front-End Eligibility (FEE) Investigation Report (investigation report) created on July 31, 2013. See Exhibit A, p. 56. The investigation report stated that the father lives in his home three times per week, but primarily with the Respondent. See Exhibit A, p. 56.

Fifth, the Department's OIG agent testified that he had an interview with the Respondent on August 22, 2013. See Exhibit A, p. 4. The Department's OIG agent testified that Respondent stated the following to him: (i) the father lives in the home and was primarily in the Respondent's home; (ii) the father would stay at his home at most three times per week; and (iii) the father is trying to rent out his home. See Exhibit A, p. 4.

At the hearing, Respondent argued that she did not commit an IPV of her FAP benefits. Respondent testified that the father would only visit her home a maximum of three times per week to spend time with the children. Respondent testified that he would sleep over less than three times per week at her home. Respondent argued that the father did not

live in her home and he had his own house during the alleged fraud period in which he resided in. Effective October 2014, Respondent testified that she and the father (now husband) moved in together and reside in their home.

Additionally, witnesses 1 to 3 confirmed Respondent's testimony. In fact, witness 3 testified that he spent time with the father at his home and that he lived there most of the time.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. As stated above, Respondent argued that the father did not reside in the home, he had his own residence, he only visited the children three times per week, and he slept over less than three times per week. The undersigned finds Respondent's testimony credible that the father did not reside in the home. Therefore, the father is not a mandatory group member of the household and the Department does not consider his income when determining the group's eligibility. See BEM 212, pp. 1 and 7 and BEM 550, p. 2. Respondent's credibility is supported by three separate witnesses who supported her argument that the father did not reside in the home. Even if the father stayed in the home three times per week, this is not more than half of the days in a calendar month, on average, in a twelve-month period, which is primarily used for primary caretaker determination. BEM 212, p. 1. In fact, the evidence indicates that the Respondent was the primary caretaker of the children as they resided with the mother (Respondent) more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, pp. 3-4 and 8-10. Nevertheless, the father did not meet the policy definition of "living with" the Respondent/children as the evidence established that he resided in his own home. See BEM 212, p. 1.

In summary, the Department failed to show by clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining Michigan FAP 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. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not disqualified from FAP benefits for 12 months. BAM 720, p. 16.

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. 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 720, p. 8.

In this case, the Department has failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of [REDACTED] for the period of April 1, 2013 to September 30, 2013. See Exhibit A, p. 4. As stated in the previous analysis, Respondent demonstrated that the father was not a mandatory group member of the household and thus, the Department does not consider his income when determining the group's eligibility. See BEM 212, pp. 1 and 7 and BEM 550, p. 2. Therefore, the Department cannot seek recoupment of Respondent's FAP benefits and the Department is ordered to delete and cease any recoupment action. See BAM 700, p. 1 and BAM 720, p. 8.

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 not** receive an OI of program benefits in the amount of [REDACTED] from the FAP benefits.

The Department is **ORDERED** to delete the OI, cease any recoupment action, and Respondent is **not** subject to any disqualification from the FAP benefits.



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

Date Signed: **6/30/2015**
Date Mailed: **6/30/2015**
EJF/tm

