

**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.: 14-016620
Issue No.: 1005; 3005
Case No.: ██████████
Hearing Date: May 13, 2015
County: WAYNE-DISTRICT 31
(GRANDMONT)

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 13, 2015, 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 Family Independence Program (FIP) and 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 and FIP?

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 November 26, 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/FIP 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/FIP fraud period is June 1, 2010 to September 30, 2010 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP/FIP 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/FIP 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 or CDC provider 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 (January 2010), 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/FIP benefits because she failed to report her employment and wages to the Department, which caused an overissuance of benefits.

First, the Department presented Respondent's application dated March 16, 2009, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 10-25.

Second, the Department presented Respondent's wage match showing income for third and fourth quarter of 2008. See Exhibit 1, p. 26.

Third, the Department presented Respondent's cash benefits Jobs and Self Sufficiency Survey and Work and Self-Sufficiency Rules for Cash Recipients dated April 7, 2009. See Exhibit 1, pp. 27-28.

Fourth, the Department provided Respondent's employment verification dated August 16, 2011. See Exhibit 1, pp. 29-39. The verification of employment indicated that Respondent began employment on April 22, 2010 and it ended on July 30, 2010. See Exhibit 1, p. 30. Moreover, the employment verification showed that she received wages from May 7, 2010 to August 27, 2010. See Exhibit 1, pp. 31-39.

Fifth, the Department presented Respondent's semi-annual contact report (contact report) received on April 22, 2009. See Exhibit 1, pp. 50-51. In the contact report, Respondent did not report any form of household income; however, this was submitted before the alleged fraud period. See Exhibit 1, pp. 50-51.

Sixth, the Department presented Respondent's contact report received on September 22, 2010, which was submitted during the alleged fraud period. See Exhibit 1, pp. 52-54. In the contact report, Respondent reported her employment with the State of Michigan and notated that her job is ending as she is a short-term worker. See Exhibit 1, p. 54. The Department acknowledged that Respondent's employment with the State of Michigan was not at issue and that it was reported timely. Moreover, the evidence indicated that Respondent was not employed with the employer at issue at the time she submitted the contact report on September 22, 2010 because her last paycheck was received on August 27, 2010. See Exhibit 1, p. 39.

At the hearing, Respondent argued that she did not intentionally defraud the Department. In fact, on or around the time Respondent began her employment on April 22, 2010, Respondent testified that she contacted her DHHS caseworker notifying the worker of the employment. Moreover, Respondent testified that she also provided her first paystub to the DHHS caseworker after it was issued on May 7, 2010.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP/FIP 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 contact report dated September 22, 2010; however, she was no longer employed at the employer at issue.

Second, Respondent credibly testified that she timely reported her income information to the Department. In fact, Respondent's credibility is supported by her contact report dated September 22, 2010, which shows that she does report her income to the Department. See Exhibit 1, p. 54. Even though this contact report is in regards to a different employer (State of Michigan), it supports Respondent's claim that she does timely report her income. 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/FIP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of her FAP/FIP 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/FIP benefits. Therefore, Respondent is not disqualified from FAP/FIP benefits for 12 months. BAM 720, p. 16.

FAP 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 705 (July 2014), p. 6 and BAM 715 (July 2014), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is agency error or client error.

An agency error is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. BAM 705, p. 1. Examples include available information was not used or was used incorrectly, etc...See BAM 705, p. 1.

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, p. 1.

In this case, the evidence presented that an agency error is present in this situation because Respondent credibly testified that she timely reported her income information to the Department and the Department failed to act on this reported change. See BAM 105, p. 7.

In establishing the OI amount, the Department presented FAP budgets for the time periods of June 2010 to September 2010. See Exhibit 1, pp. 61-77. However, a review of the FAP budgets found that the Department improperly calculated the overissuance.

For FAP client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 715, p. 8. A review of all of the FAP budgets indicated that the Department did not allow the 20 percent earned income deduction. See Exhibit 1, pp. 85-138. However, it is found that there is an agency error present in this case. For agency error, policy does not state to exclude the 20 percent earned income deduction on the unreported earnings. See BAM 705, pp. 1-12. In essence, for agency error calculations, the Department would allow the client the 20 percent earned income deduction because it is the Department that caused the incorrect action. See BAM 705, p. 1. As such, the Department improperly calculated the FAP budgets because it failed to provide the Respondent the 20 percent earned income deduction.

Additionally, the FAP budgets for the periods of August 2010 to September 2010 also budgeted Respondent's income from the State of Michigan and considered it unreported earnings. See Exhibit 1, pp. 70-77. However, the Department acknowledged during the hearing that Respondent's employment with the State of Michigan was not at issue and reported timely. Thus, this is another reason why the Department did not properly calculate the OI amounts as the Department failed to provide Respondent with the 20 percent earned income deduction for her employment with the State of Michigan. Thus, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to properly calculate the FAP OI amount.

FIP Overissuance

As stated above, an agency error is present in this case. Moreover, there is no exclusion of a 20 percent earned income deduction policy to the FIP overissuance calculation as compared to the FAP calculation.

Applying the agency error overissuance period, it is found that the appropriate OI period begin date is June 1, 2010. See BAM 705, p. 5 and Exhibit 1, pp. 41-42.

In establishing the OI amount, the Department presented FIP budgets for the OI period of June 2010 to September 2010. See Exhibit 1, pp. 61-77. This Administrative Law Judge (ALJ) found the FIP budgets for June 2010 to July 2010 to be fair and accurate. See Exhibit 1, pp. 61-69. These budgets included Respondent's income that was not previously budgeted. See Exhibit 1, pp. 40-49. However, this ALJ does not find the August 2010 to September 2010 FIP budgets to be fair and accurate. See Exhibit 1, pp. 70-77. These budgets included Respondent's income that was not previously budgeted. See Exhibit 1, pp. 40-49. But, these budgets also included Respondent's income from the State of Michigan. The Department, though, failed to provide any proof of Respondent's employment earnings from the State of Michigan and therefore, this ALJ is unable to determine if the Department properly calculated Respondent's income for August 2010 to September 2010.

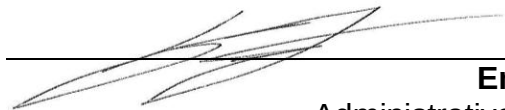
Nevertheless, policy allows the OIG to requests IPV hearings when the total amount is less than [REDACTED], and the alleged fraud is committed by a state/government employee. See BAM 720, pp. 12-13. Thus, the Department is entitled to recoup [REDACTED] in FIP benefits for the period of June 1, 2010 to July 31, 2010. See BAM 720, pp. 12-13 (total OI amount less than [REDACTED], but Respondent is or was a state/government employee).

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 FIP benefits.

The Department is ORDERED to reduce the OI to [REDACTED] for the period June 1, 2010 to July 31, 2010, and initiate recoupment/collection procedures in accordance with Department policy.



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

Date Signed: **5/20/2015**

Date Mailed: **5/20/2015**

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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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

CC: