

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016682
Issue No.: 1005, 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2015
County: Muskegon

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 15, 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 Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) 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 FIP and 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 December 3, 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 FIP and FAP benefits issued by the Department.

4. Respondent was aware of the responsibility to timely report his income to the Department.
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 December 1, 2013, to May 31, 2013, (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in FAP benefits and \$ [REDACTED] in FIP benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and an OI in 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 (10/1/14), p. 14; ASM 165 (5/1/13), p. 4.

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 (5/1/14), 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, Respondent was receiving benefits from the Veterans Administration (VA) while he was receiving FIP and FAP from the Department. The Department's contention is that it was unaware of those VA benefits, and that Respondent withheld that information in order to receive more in benefits than he would otherwise have received. Respondent, on the other hand, contends that he provided the Department with that information each year by submitting a copy of his annual letter from the VA. The Department provided a copy of such a letter dated December 6, 2012 (Exhibit A Page 16) in which Respondent reported his VA income. That letter is date-stamped as received by the Department on May 1, 2013. It will be noted that, in a Redetermination dated April 30, 2012, (Exhibit A Pages 12-15), Respondent only reported income that his wife was receiving from the Social Security Administration.

Respondent testified that, because he was considered partially disabled from his service in the military, he was offered an option of receiving a lump-sum payment. He took the option and received that payment. What he did not understand at the time was that the lump-sum would be offset against his monthly benefits for an extended period of years. The consequence was that, although he was awarded a monthly amount each year during the offset period, he was not actually receiving any sort of payment from the VA.

The evidence is convincing that Respondent did not intentionally withhold information from the Department.

Disqualification

A client who is found to have committed a IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (4/1/14), 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 presented clear and convincing evidence that Respondent intentionally withheld information from the Department. Therefore, there will not be a disqualification period.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Department presented evidence that Respondent was receiving benefits from the VA that were not incorporated into his FIP and FAP budgets. However, those benefits were not received as income to him. Instead, they were an offset against a lump sum that Respondent had received years earlier. As stated in BEM 500, (4/1/15) at page 6, when determining income for purposes of FIP and FAP:

**FIP, RCA, SDA,
CDC, and FAP Only**

Bridges treats lump-sums and accumulated benefits as assets starting the month received.

An individual might receive a single payment that includes both accumulated benefits and benefits intended as payment for the payment month. Bridges treats the portion intended for the payment month as income.

Because he had received the lump sum in the past, and not during the OI period, those would have been counted either as an asset or as income at the time the lump sum was received. See BEM 500 at page 5: "Funds cannot be counted as both income and as assets in the same month. Do not include funds entered as income in asset amounts entered in Bridges." Therefore, because the lump sum would have been counted in one form or the other at the time it was received, the Department would not have counted the monthly benefits as income during the time those benefits were used to offset the lump sum. Respondent did not receive an OI.

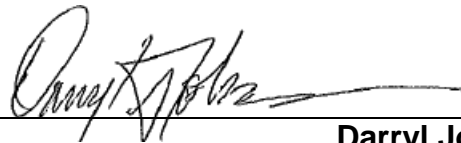
DECISION AND ORDER

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 from the FIP or FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action.

It is FURTHER ORDERED that Respondent is not disqualified from receiving FIP or FAP.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/20/2015**

Date Mailed: **4/20/2015**

DJ/jaf

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:

