

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017560
Issue No.: 1005, 3005
Case No.: [REDACTED]
Hearing Date: March 25, 2015
County: Macomb-District 20

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on March 25, 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:

[REDACTED].

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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Family Independence Program (FIP) and 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 December 15, 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 acknowledged the responsibility to report the size and composition of her benefit group to the Department on an application for assistance dated August 4, 2010.
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 September 1, 2010, through April 30, 2011.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP 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 FIP benefits in the amount of \$ [REDACTED]
9. 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.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
11. This was Respondent's first alleged IPV.
12. 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 Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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 Family Independence Agency) 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 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 \$500 or more, **or**
 - the total OI 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 (May 1, 2014), p. 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 1, 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 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.

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.

A Family Independence Program (FIP) benefit group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker. Department of Human Services Bridges Eligibility Manual (BEM) 210 (October 1, 2014), p 1.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2014), p 1.

In this case, the Respondent acknowledged the responsibility to report the size and composition of her benefit group on an application for assistance dated August 4, 2010. The Respondent was approved as a group of two for Family Independence Program (FIP) benefits from September 1, 2010, through April 30, 2011, and Food Assistance Program (FAP) benefits from September 1, 2010, through March 31, 2011. The Department discovered later that the Respondent's mother had been appointed as the guardian of the Respondent's child. The Department alleges that the Respondent's child was not living with the Respondent. Without a minor child in her home, the Respondent was not eligible for any of the FIP benefits that she received. As a group of one, the Respondent was eligible for FAP benefits totaling \$ [REDACTED] but actually received \$ [REDACTED] as a group of two.

The Respondent argued that her child was living with her despite the fact that her mother is the guardian. The Respondent testified that she was unable to regain legal custody of her child but that her mother permitted her child to live with the Respondent. The Respondent testified that her mother was not eligible for FIP benefits.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*


This Administrative Law Judge finds that the evidence on the record supports a finding that the Respondent was not living with her child and the child should not have been included in her benefit group. The Respondent's version of the events would allow her to reap the benefits of living with her child without the burdens of regaining legal custody of her child and this Administrative Law Judge finds that this scenario is not supported by the evidence on the record. The Department has established by clear and convincing evidence that the Respondent falsely reported that her child was living with her for the purposes of receiving and maintaining FIP and FAP benefits that she would not have been eligible for otherwise.

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 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 following program(s) FIP.
3. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

5. It is FURTHER ORDERED that Respondent be disqualified from FIP and FAP for a period of 12 months.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **3/27/2015**

Date Mailed: **3/27/2015**

KS/las

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.