

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-018652
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 29, 2015
County: Jackson

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on April 29, 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 Food Assistance Program (FAP) and State Emergency Relief (SER) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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 23, 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. The Department's OIG indicates that the time period it is considering the fraud period is August 4, 2009, through September 30, 2011.

4. On an application for assistance dated December 20, 2010, the Respondent acknowledged the duty to report all income received by the benefit group.
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 alleges that from December 1, 2010, to September 30, 2011, the Respondent received \$ [REDACTED] of Food Assistance Program (FAP) benefits but was eligible for only \$ 0, and therefore received an overissuance of \$ [REDACTED]
7. The Department alleges that from August 4, 2009, to September 2, 2009, the Respondent received \$ [REDACTED] of State Emergency Relief (SER) benefits but was eligible for only \$ 0, and therefore received an overissuance of \$ [REDACTED]
8. This was Respondent's first alleged IPV.
9. 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (October 1, 2014), pp 12-13.

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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 700 (May 1, 2014), p 7,
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.

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.

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 Department will refer SER overissuances to recoupment specialist only when IPV is suspected and a FIP, SDA or FAP overissuance also exists for the same period. The Department will follow procedures in the SER manual for recoupment of SER. BAM 720, p 4.

A SER overpayment is an amount of assistance issued that the SER group was not eligible to receive. The Department attempts to obtain repayment from the SER group of all SER overpayments. SER overpayments are recouped only by requesting the SER group to repay the amount overpaid in cash (cash recoupment). Department of Health and Human Services Emergency Relief Manual (ERM) 404 (March 1, 2013), pp 1-2.

On an application for assistance dated December 20, 2010, the Respondent acknowledged the duty to report all income received by the benefit group to the Department. The Respondent was an ongoing FAP recipient from December 1, 2010, through September 30, 2011. The Respondent applied for State Emergency Relief (SER) benefits on August 2, 2009. On her applications for FAP and SER assistance, the Respondent failed to report that she was receiving income from an annuity in the gross monthly amount of \$ [REDACTED]. From December 1, 2010, the Respondent received FAP benefits totaling \$ [REDACTED] but would not have been eligible for any of these benefits if she had reported her annuity income and her application for assistance. From August 4, 2009, through September 2, 2009, the Respondent was issued SER benefits providing her with assistance with her utility bills in the amount of \$ [REDACTED] but would not have been eligible for any of those benefits either if she had reported her annuity income to the Department on her application. The Respondent received an overissuance of FAP benefits totaling \$ [REDACTED] and an overissuance of SER benefits totaling \$ [REDACTED].

The Respondent testified that as a result of her family's financial situation, that she would not have been able to provide them with adequate food or pay her utility bills despite the fact that she was receiving a monthly income from her annuity. The Respondent did not claim that she had reported the annuity to the Department.


This Administrative Law Judge finds that the Respondent had a duty to report her annuity income to the Department. The Department has established by clear and convincing evidence that the Respondent intentionally failed to report this annuity income to the Department for the purposes of receiving and maintaining Food Assistance Program (FAP) benefits that she would not have been eligible for otherwise. The Department has established that the Respondent received an overissuance of SER benefits that the Department is now required to recoup.

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 Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]
3. Respondent did receive an OI of State Emergency Relief (SER) program benefits in the amount of \$ [REDACTED]
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 the Food Assistance Program (FAP) for a period of 12 months.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/12/2015**

Date Mailed: **5/12/2015**

KS/las

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:

[REDACTED]