

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

IN THE MATTER OF:



Reg. No.: 14-018955
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 07, 2015
County: WAYNE-DISTRICT 18 (TAYLOR)

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, telephone hearing was held on April 07, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) 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 30, 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 July 1, 2012.
4. Respondent acknowledged on an application for assistance dated January 17, 2012, the responsibility to report all 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 alleges that from July 1, 2012, to December 31, 2012, the Respondent received [REDACTED] of Food Assistance Program (FAP) benefits but was eligible for only [REDACTED], and therefore received an overissuance of [REDACTED].
7. This was Respondent's first alleged IPV.
8. A notice of hearing was mailed to Respondent at the last known address and was 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 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 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.

If improper reporting or budgeting of income caused the overissuance, the Department will use actual income for the overissuance month for that income source. For client error overissuances due, at least in part, to failure to report earnings, do not allow the 20% earned income deduction on the unreported earnings. Department of Human Services Bridges Administrative Manual (BAM) 720 (August 1, 2012), pp 7-8.

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.*

In this case, the Respondent acknowledged on an application for assistance dated January 17, 2012, the responsibility to report all income to the Department. The Respondent was an ongoing FAP recipient as a group of one from July 1, 2012, through December 31, 2012. The Respondent was employed and received earned income from May 24, 2012, through March 29, 2013. This income was not used to determine the Claimant's eligibility for FAP benefits during the period of alleged fraud.

The Respondent was employed at a rate of [REDACTED] per hour and was paid twice per month. On July 13, 2012, the Respondent received earned income in the gross monthly amount of [REDACTED] and on July 30, 2012, the Respondent received [REDACTED] of earned income. Since the Respondent failed to report his income for this month in a timely manner, the Department will not apply any earned income credit to this income to determine if there was an overissuance.

This Administrative Law Judge finds that the Respondent would have an adjusted gross income of [REDACTED] based on his total actual income for that month less the \$146 standard deduction for a group of one. Department of Human Services Reference Table Manual (RFT) 255 (October 1, 2011), p 1. This Administrative Law Judge finds that in July of 2012, the Respondent was eligible for a [REDACTED] heat and utility standard deduction under the Low Income Home Energy Assistance Program (LIHEAP). Department of Human Services Bridges Eligibility Manual (BEM) 554 (January 1, 2011), p 12. The Respondent reported no other expenses and claimed to be homeless on his application for assistance. A person with no other housing expenses or credits other

than the heat and utility credit would receive an excess shelter deduction of \$208, which was determined by subtracting 50% of the adjusted gross income from the standard heat and utility deduction. This Administrative Law Judge finds that for July of 2012, the Respondent had a net income of \$481.55, which was determined by subtracting his excess shelter deduction from his adjusted gross income. A group of one with a net income of \$481.55 would have been eligible for a \$55 monthly allotment of FAP benefits in July of 2012. Department of Human Services Reference Table Manual (RFT) 260 (October 1, 2011), p 5.

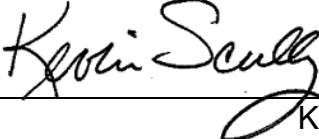
The Department alleges that for July of 2012, the Respondent was eligible for a [REDACTED] monthly allotment of Food Assistance Program (FAP) benefits. In July of 2012, a group of one with a net income ranging from [REDACTED] to [REDACTED]. RFT 260, pp 6-16

This Administrative Law Judge finds that the Department presented insufficient evidence to demonstrate that it used the Respondent's actual income to determine the alleged overissuance. The Department failed to supply copies of budgets on the record supporting its determination of the Respondent's FAP eligibility during the period of alleged fraud. Therefore, this Administrative Law Judge finds that the Department has failed to present clear and convincing evidence of an intentional program violation (IPV).

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



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

Date Signed: **4/9/2015**

Date Mailed: **4/9/2015**

KS/sw

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:

