

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-1253
Issue No(s): 3055
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 February 5, 2014 from Detroit, Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent and her witness, [REDACTED] [REDACTED] (roommate/friend).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
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)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 September 26, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report earned income.
5. Respondent had no 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 November 1, 2010 to August 31, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$2,000 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$2,000.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 \$1000 or more, or
 - the total OI amount is less than \$1000, **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 (July 2013), p. 12.

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 (July 2013), 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, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report her employment and wages to the Department, which caused an overissuance of FAP benefits.

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.

The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2010 to August 31, 2011. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report the income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, the Department presented Respondent's application dated August 19, 2009, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1. In this application, Respondent reported her employment income, however, this was in regards to a previous child care she worked at and was not part of the alleged fraud period. See Exhibit 1.

Second, the Department presented Respondent's redetermination dated August 2, 2010, which again she reported her employment income, however, this was in regards to a previous child care she worked at. See Exhibit 1.

Third, the Department presented Respondent's redetermination dated August 2, 2011, which she reported that her income was "daycare." See Exhibit 1. This was during the alleged fraud period and it was unclear if this referred to Respondent's previous daycare or new daycare. However, Respondent did indicate that her start and/or end date was August 2010, which again made it unclear. See Exhibit 1.

Fourth, the Department presented a Verification of Employment and income information from Respondent's previous daycare employer. See Exhibit 1. The Verification of Employment indicated that Respondent began employment on March 13, 2007 and ended on September 13, 2010. See Exhibit 1. Also, the employer provided Respondent's payroll information. See Exhibit 1.

Fifth, the Department's OIG report indicated that it met with the Respondent on February 29, 2012. See Exhibit 1. The OIG report indicated that she began working with her new daycare in August 2010. See Exhibit 1. The Respondent presented several employer statements that were conflicting. See Exhibit 1. Respondent presented one letter from her employer dated August 1, 2011, which stated she was working from August 30, 2010, ongoing. See Exhibit 1. However, another letter (undated) stated she was no longer working as of November 4, 2010. See Exhibit 1. Ultimately, the Department presented a Verification of Employment and income information from Respondent's new daycare employer. See Exhibit 1. The Verification of Employment indicated that Respondent began employment on August 6, 2010 and ended on November 5, 2011. See Exhibit 1. Also, the employer provided Respondent's payroll information. See Exhibit 1. It should be noted that Respondent mostly agreed with the payroll information, other than her date paid for her first two pay checks. Rather than being August 6 and 10, 2010 for her first two paychecks, Respondent testified that it should have been September 6 and 10, 2010. See Exhibit 1.

At the hearing, Respondent and her witness testified that she did not intentionally withhold or misrepresent her income information. Respondent testified that she actually reported to the Department her new daycare information. Moreover, Respondent presented as evidence a Children's Protective Services (CPS) Central Registry Clearance Request. See Exhibit A. This form was signed by the Respondent on September 2, 2010, however, it was not date stamped by the Department. See Exhibit A. Respondent testified that she submitted this form to the Department on September 2, 2010, in order for her to obtain employment at the new daycare. Respondent infers that she reported her new employment timely and never withheld or misrepresented her income information. Moreover, Respondent's witness testified that maybe they did miss the 10 day reporting requirements, but they did report all of her income to the Department. Respondent's witness testified that the Department was missing information.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she

intentionally withheld information. The redeterminations and applications all occurred prior the alleged fraud period. Moreover, the Department presented Respondent's redetermination dated August 2, 2011, which she reported that her income was "daycare." See Exhibit 1. It is understandable that this document presents uncertainty of whether this is Respondent's old or new employer. However, this evidence actually shows that Respondent reported her employment information and it is during the alleged fraud period. This shows that Respondent is not intentionally withholding or misrepresenting the income information.

Additionally, Respondent credibly testified that she did not intentionally withhold or misrepresent her income information. Respondent presented as evidence a CPS document, which showed her reporting the employment as of September 2, 2010. See Exhibit A. Even though the form is not date stamped by the Department, it presents persuasive evidence that Respondent did not intentionally withhold or misrepresent her income information.

In summary, Respondent presented credible testimony and evidence that she did not intentionally withhold or misrepresent her income information. 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 program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 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.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

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 (July 2013), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of her income. First, Respondent's CPS letter is persuasive evidence that she did not purposely failed to report income. See Exhibit A. However, it is also unclear when this was submitted as there is no date-stamp by the Department. Second, it was unclear with the Redetermination dated August 2, 2011, which daycare Respondent was referencing. See Exhibit 1. Moreover, even if she did report her daycare information, this occurred towards the end of the fraud period. Third, Respondent presented conflicting employer statements when her employment ended and/or began. See Exhibit 1. Fourth, Respondent's witness testified that they were not disputing the overissuance, but only the IPV was at issue. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105, p. 7. It is the Respondent's responsibility to report the changes and not the DHS caseworker. BAM 105, p. 7.

Based on the information above, the Department presented persuasive evidence that an OI is present due to client error. The evidence shows that the Respondent failed to report the changes to the Department timely, which caused an overissuance of FAP benefits.

Regarding client error overissuances, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date the OI was referred to the RS, whichever is later. BAM 715, p. 4. To determine the first month of the OI period (for OIs 11/97 or later) the department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 715, p. 4. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, p. 4.

Applying the above standard and in consideration of the additional group member receiving unreported income in August and/or September 2010, the Department determined that the OI period began on November 1, 2010. See Exhibit 1. It is found that the Department applied the appropriate OI begin date.

Additionally, 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 720, p. 8.

For FAP cases, if improper reporting or budgeting of income caused the OI, the Department uses actual income for the OI month for that income source. BAM 715, p. 7. The Department converts all income to a monthly amount. BAM 715, p. 7. An

exception for FAP only states that the Department does not convert the averaged monthly income reported on a wage match. BAM 715, p. 7. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 715, p. 7. Also, for client error OIs due, at least in part, to failure to report earnings, the Department does not allow the 20% earned income deduction on the unreported earnings. BAM 715, p. 8.

In this case, the Department did not present any OI budgets, it only presented benefit summaries. Therefore, it was not possible to determine if whether the Department properly calculated the OI amounts based on the employer's submitted payroll information.

The local office and client or authorized hearing representative will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (July 2013), p. 33. Both the local office and the client or authorized hearing representative must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, pp. 33-34. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 35.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to present any OI budgets. BAM 600, pp. 33-35. There is evidence to show an OI is present, however, the Department also needs to establish how it calculated the OI amount. Because the Department failed to present any OI budgets, the Department did not satisfy its burden of showing that it acted in accordance with Department policy. Therefore, there is no OI present as the Department failed to present any budgets to show how it calculated the OI amount. BAM 600, pp. 33-35.

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 did did not commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$2,000 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 3, 2014

Date Mailed: March 3, 2014

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.

EJF/tlf

cc:

