

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

IN THE MATTER OF:



Reg. No.: 2014-1287
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], 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
 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 June 1, 2011 to July 31, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$1,052 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 \$1,052.
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 and an additional group member's (father of her child) 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 (June 2011), 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 June 1, 2011 to July 31, 2011. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report both incomes 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 FAP application dated April 18, 2011, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1. Moreover, the application indicates the Respondent did not include any employment information. See Exhibit 1. It should be noted that at the time of application, Respondent was not employed, however, the employer document indicated that the additional group member was employed at the time of application. Additionally, the notes in the application indicated that client stated that she will be going back to work from maternity leave. See Exhibit 1. However, the notes also indicate that the additional group member has no income. See Exhibit 1.

Second, the Department's OIG Investigation Report indicated that the Department first became aware of the income in a State Emergency Relief (SER) application in June 2011. See Exhibit 1. The Department did not present the application as an exhibit, however testified that both incomes were reported in the SER application on June 6, 2011.

Third, the Department presented a Verification of Employment and income information from Respondent's and the additional group member's employer (both had same employer) dated October 28, 2011. See Exhibit 1. The Verification of Employment indicated that Respondent began employment on April 25, 2011. See Exhibit 1. Also, the employer provided Respondent's payroll information from January 2011 to October 2011. See Exhibit 1. Additionally, the Verification of Employment indicated that the additional group member began employment on April 12, 2007. See Exhibit 1. Also, the employer provided the additional group member's payroll information from January 2011 to October 2011. See Exhibit 1.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. The evidence was not persuasive to show 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.

First, the Department presented Respondent's FAP application dated April 18, 2011. See Exhibit 1. The application indicated no income information for any group member. See Exhibit 1. However, the notes in the application indicated that client stated that she will be going back to work from maternity leave. See Exhibit 1. This information shows that the Respondent did not intentionally withhold or misrepresented the information. Actually, this information notifies the Department that she will be going back to work and therefore, the Department was aware of this information.

Second, though, the Department does present persuasive evidence in regards to the additional group member . At the time of application, Respondent was not employed, however, the employer's document indicated that the additional group member was employed at the time of application. The employer's document indicated that the additional group member began employment on April 12, 2007 and therefore, was employed at the time of application. See Exhibit 1. Moreover, the application notes indicate that the additional group member has no income. See Exhibit 1. The Department testified that both incomes were reported in a SER application on June 6, 2011. This evidence is persuasive that the Respondent did not report the incomes until June 2011. But, this evidence does not show that the Respondent intentionally withheld or misrepresented the income information. Even though the application notes indicated no income information for the additional group member, Respondent did eventually notify the Department of the reported changes during the alleged fraud period. Based on this information, Respondent did not intentionally withheld or misrepresented the income information as she first reported her maternity leave ending and eventually reporting all income information in June 2011 (during the alleged fraud period).

In summary, 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 reported changes more than two months after they occurred. See Exhibit 1. Moreover, Respondent failed to notify the Department of the additional group member's income until the SER application on June 6, 2011. Based on this information, it is persuasive evidence that an OI is present due to client error. The evidence shows that the Respondent failed to report the changes timely to the Department, which caused an overissuance of FAP benefits.

In regards to policy, Respondent did not report the earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Thus, an OI was present for 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 Respondent starting to receive the unreported income in May 2011 and the additional group member receiving unreported income, the Department determined that the OI period began on June 1, 2011. 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 presented an OI budget for July 2011, but also covered the certification period of April 18, 2011 to March 31, 2012. See Exhibit 1. The budget was provided for the FAP programs using the employer's submitted documents. See Exhibit 1. A review of the OI budget for July 2011 found it to be fair and correct. However, the Department only presented a benefit summary issuance for June 2011, but not an OI budget. A review of Respondent's and the additional group member's income determines that both incomes are still in excess of the \$1,526 monthly net income for a group size of three. See RFT 250 (October 2010), p. 1 and BEM 556 (January 2010), p. 5.

Based on the above information, the Department established that from June 2011 to July 2011 that Respondent was issued \$1,052 in FAP benefits. After budgeting the Respondent's income, the corrected total amount of FAP benefits issuance was \$0. The overissuance was established to be \$1,052 in FAP benefits. See Exhibit 1. Thus, the Department is entitled to recoup \$1,052 of FAP benefits.


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 \$1,052 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,052 in accordance with Department policy.


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

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