

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

IN THE MATTER OF:



Reg. No.: 2014235
Issue No.: 2005; 3005
Case No.: [REDACTED]
Hearing Date: December 19, 2013
County: Calhoun (21)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 December 19, 2013 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: .

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 [REDACTED], 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 income.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department alleges that between [REDACTED] 2011 and [REDACTED] 2011, Respondent was issued \$200 in FIP FAP SDA CDC MA benefits by the State of Michigan, but was eligible to receive \$0 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$200.
8. The Department alleges that between [REDACTED] 2011 and [REDACTED] 2011, it paid \$1,110.12 in FIP FAP SDA CDC MA benefits on Respondent's group's behalf, and Respondent was eligible for \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,110.12.
10. This was Respondent's first second third alleged FAP IPV.
11. 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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 a FAP IPV because he intentionally failed to report employment with, and income from, [REDACTED]. The Department testified that Respondent was a simplified reporting (SR) client who, at the time he was receiving FAP benefits, reported income from employment at [REDACTED]. SR groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size. BAM 200 (January 2011), p. 1. The SR income limit for a one-person FAP group in [REDACTED] 2011 was \$1174. RFT 250 (October 2010), p. 1.

A Verification of Employment completed by [REDACTED] shows that Respondent had inconsistent long-term employment with [REDACTED], but for the period between [REDACTED] 2011, through [REDACTED] 2011, he had consistent weekly employment resulting in gross income of \$2,541.75 for [REDACTED] 2011, \$3,991.60 for [REDACTED] 2011, and \$2,482.30 for [REDACTED] 2011. Respondent's income exceeded the applicable SR income limit. The FAP OI budget for [REDACTED] 2011 shows that Respondent's income from [REDACTED] was not considered in the calculation of his FAP benefits. Respondent should have been aware that employment income would affect his FAP eligibility and benefit amount. The absence of any reported employment income from [REDACTED] establishes, by clear and convincing evidence, that Respondent intentionally withheld information for the purpose of maintaining or preventing reduction 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. 12. 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. 13.

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 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 established that Respondent committed a FAP IPV. Because the Department established that this was Respondent's first FAP IPV, he is subject to a one-year disqualification from the FAP program.

Overissuance

The Department has alleged an OI of FAP and MA benefits resulting from Respondent's receipt of Michigan-issued benefits. 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.

(i) FAP OI

The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2013), pp. 1, 6; BAM 705 (July 2013), p. 6.

At the hearing, the Department established that the State of Michigan issued \$200 in FAP benefits to Respondent in ██████ 2011. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period. In support of its FAP OI case for ██████ 2011, the Department presented a Verification of Employment showing that Respondent was employed by ██████ from ██████ 2011 through ██████ 2011 and a FAP OI budget for ██████ 2011 showing that his earned income from ██████ during this period had not been included in his FAP budget. For a client's failure to report income over the SR income limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 4-5. Because Respondent had gross income over the SR limit in ██████ 2011 and ██████ 2011, the Department properly began the OI period in ██████ 2011. A review of ██████ 2011 FAP OI budget shows that, when Respondent's unreported earned income is included in the calculation of his FAP benefits, he was not eligible for any FAP benefits in ██████ 2011. Thus, the Department is entitled to recoup or collect from Respondent \$200 in FAP benefits issued to him in ██████ 2011.

(ii) MA OI

The Department also sought to recoup an MA overissuance. The Department may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710, p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. The Verification of Employment completed by ██████ shows that Respondent had employment income from ██████ between

██████████ 2011 and ██████████ 2011. There was no evidence that Respondent reported this income to the Department. Thus, the Department established that the MA OI was due to client error.

The amount of an MA OI for an OI due to unreported income or a change affecting need allowances is **the lesser of** (i) the correct deductible (minus any amount already met) if there would have been a deductible or larger deductible, **or** (ii) the amount of MA payments. BAM 710, pp. 1-2.

The Department established that the State of Michigan paid \$1,110.12 in MA benefits in Respondent's group's behalf, from ██████████ ██████████ 2011 through ██████████ ██████████ 2011, and contended that it was entitled to recoup or collect this entire amount from Respondent as the MA OI. Because this case involved unreported income, the Department was required to establish that the amount of MA payments was less than the correct deductible that Respondent would have been subject to if his income had been properly considered in her MA budget. The Department did not present any evidence to establish that any deductible that would have been applicable to Respondent's MA case if he had reported his income was greater than the MA payments it made. In the absence of any such evidence, the Department has failed to establish that it has properly calculated the MA OI amount.

Therefore, the Department is entitled to recoup or collect from Respondent only the \$200 overissued 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, concludes that:

1. Respondent did did not commit a FAP IPV by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$200 from the following program(s) FIP FAP SDA CDC MA.
3. Respondent did did not receive an OI of program benefits in the amount of \$1,110.12 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to delete the MA OI and cease any recoupment and/or collection action concerning the MA OI

The Department is ORDERED to initiate recoupment and/or collection procedures for the FAP OI the amount of \$200 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 22, 2014

Date Mailed: January 22, 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.

ACE/tlf

cc:

