

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

IN THE MATTER OF:



Reg. No.: 201425635
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 2, 2014
County: Kalamazoo (00)

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 April 2, 2014 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 the Department establish, by clear and convincing evidence, that Respondent committed 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 November 27, 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 FAP benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report income and changes in income and group size.
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 (i) June 1, 2010 to May 31, 2011 and (ii) February 1, 2012 to October 31, 2012 (collectively, the fraud period).
7. During the fraud period, Respondent was issued \$7893 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2596 in such benefits during this time period.
8. The Department alleges that Respondent received FAP OI in the amount of \$5297.
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 (June 2013), p. 12; BAM 720 (May 2014), pp. 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 her or her reporting responsibilities, **and**
- The client has no apparent physical or mental impairment that limits her or her understanding or ability to fulfill reporting responsibilities.

BAM 720, p. 1; BAM 700 (July 2013 and May 2014), p. 7.

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 she intentionally failed to report employment with, and income from, [REDACTED]. In support of its case, the Department presented (i) a Verification of Employment completed by [REDACTED], showing that Respondent was employed by, and received employment income from, [REDACTED] beginning July 3, 2008 and during the fraud period; (ii) FAP applications Respondent submitted to the Department on June 8, 2010 and January 8, 2012, in which Respondent reported no employment income; (iii) a benefit summary inquiry showing that Respondent was issued FAP benefits during the months at issue; and (iv) FAP OI budgets showing that income from [REDACTED] was not included in the calculation of Respondent's FAP benefits at the time benefits during the fraud period were issued.

This evidence presented shows that at the time Respondent completed her June 8, 2010 and January 8, 2012 applications she had earned income that was ongoing. However, she did not report her earned income in either application. Although a review of the Verification of Employment shows lapses in pay periods and fluctuating income amounts, Respondent's statements in the applications were inaccurate and misleading. The absence of any reported employment establishes, by clear and convincing evidence, that Respondent intentionally withheld information for the purpose of maintaining or preventing reduction of FAP benefits. Thus, the Department established that Respondent committed an IPV concerning her FAP case.

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

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. The amount of the 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 and May 2014), pp. 1, 6; BAM 705 (July 2013 and May 2014), p. 6.

The Department alleges that Respondent was overissued FAP benefits between June 1, 2010 and May 31, 2011 and between February 1, 2012 and October 31, 2012. During this period, Respondent received \$7621 in FAP benefits. The Department established that Respondent had employment income during each of the months at issue that was not included in the calculation of her FAP benefits. The Department presented FAP OI budgets for each of the months during the fraud period and testified that the only change reflected in the OI budgets compared to the budgets originally relied upon in calculating Respondent's FAP eligibility amount was the inclusion of the unreported income from [REDACTED]. A review of the FAP OI budgets shows that, when Respondent's unreported income was included in her FAP budget, Respondent was eligible to receive only \$2324 of the \$7621 in FAP benefits issued to her during the fraud period. Therefore, the Department is entitled to recoup/collect from Respondent \$5297, the difference in the amount of FAP benefits she was eligible to receive and the amount she actually received during the fraud period.


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** commit an intentional program violation (IPV).
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$5297.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$5297 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP 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: April 23, 2014

Date Mailed: April 23, 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:

