

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

IN THE MATTER OF:



Reg. No.: 201425734
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 2, 2014
County: Allegan (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 February 12, 2014, 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 March 1, 2010 through February 29, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$14,190 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received FAP OI in the amount of \$14,190.
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.

In this case, Respondent signed a Disqualification Consent Agreement, DHS-830, on August 23, 2013, in connection with the Department's allegations that she committed an IPV by failing to report her husband's presence in the home and his employment income. However, there was no evidence presented that Respondent signed a Request for Waiver of Disqualification Hearing, DHS-826. Timely notice of the IPV hearing was sent to Respondent, but Respondent did not appear at the hearing. The hearing proceeded in Respondent's absence.

Intentional Program Violation and Disqualification

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 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.

On August 23, 2013, Respondent signed a Disqualification Consent Agreement, DHS-830, agreeing that she was subject to a one year disqualification from the FAP program. A client who signs a DHS-830 Disqualification Consent Agreement is determined to have committed a FAP IPV and is subject to a disqualification. BAM 720 (July 2013), pp. 2, 15. Because Respondent signed the DHS-830 and this was her first FAP IPV, the Department has established that Respondent is subject to a one year disqualification from the FAP program. 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. 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.

In this case, the Department alleges that Respondent committed a FAP IPV and was overissued \$14,190 in FAP benefits between March 1, 2010 and February 29, 2012 because she failed to report that her husband lived in her household and, as a consequence, his earned income was not taken into consideration in the calculation of Respondent's FAP eligibility and benefit amount.

Spouses who are legally married and live together must be in the same FAP group. BEM 212 (January 2010 and October 2011), p. 1. With limited exceptions, the income of all group members is considered in calculating FAP eligibility and benefit amounts. BEM 550 (January 2010 and February 2012), pp. 2-3. The Department contended that Respondent's husband lived with her for the entire fraud period, from March 1, 2010 to February 29, 2012, and presented FAP OI budgets for each of the months at issue

showing that, when Respondent's husband's income is included in the calculation of her FAP benefits, Respondent was overissued all \$14,190 in FAP benefits she received during the fraud period. However, the Department's calculation of Respondent's husband's income is based on his quarterly pay from a consolidated wage match. While the Department presented an employment verification completed by Respondent's husband's employer showing each paycheck during the fraud period, it did not present the consolidated inquiry showing the income considered in the calculation of the FAP OI budgets. As such, the FAP OI budgets fail to support the Department's calculation of the overissuance. However, Respondent signed an affidavit on August 23, 2013 agreeing to sign a one-year disqualification agreement and to repay the Department at least \$2059 for overissued benefits. Accordingly, the OI amount is limited to the \$2059 agreed by Respondent.

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 committed an intentional program violation (IPV).
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$2059.

The Department is ORDERED to reduce the OI to \$2059 for the period October 2010 to February 2012, and initiate recoupment or collection procedures 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.

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