

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 2014 26786
Issue No(s).: 3005
Case No.: ██████████
Hearing Date: April 9, 2014
County: Jackson (38)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 9, 2014 from Detroit, Michigan. The Department was represented by ██████████, 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 12/30/13, 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 person residing with her and disclose this information to the Department.
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 for FIP is (12/1/2009 through 02/28/12), and for FAP (10/1/08 through 2/8/12) (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in ☒ FIP ☐ FAP ☐ SDA ☐ CDC ☐ MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. During the fraud period, Respondent was issued [REDACTED] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] 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 [REDACTED]
10. The Department alleges that Respondent received an OI in ☒ FIP ☐ FAP ☐ SDA ☐ CDC ☐ MA benefits in the amount of [REDACTED]. The total overissuance for FIP and FAP alleged was [REDACTED]4.
11. This was Respondent's ☒ first ☐ second ☐ third alleged IPV.
12. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

☒ 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 (7/1/13), p. 10.

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 (7/1/13), p. 6; 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 seeks an intentional program violation of both FIP cash assistance and Food Assistance (FAP) benefits and recoupment of overissued benefits. The periods in question for overissuance for FIP is (12/1/2009 through 02/28/12), and for FAP (10/1/08 through 2/8/12).

The Department has alleged that the Respondent's boyfriend was living with her during the periods in question and that she did not report him as a group member and had income that was not included in the FIP or FAP benefit calculations. The documentary evidence presented and contained in the hearing packet is summarized as follows.

Three assistance applications (DHS 1171) were filed by the Respondent.

The first application was filed on 8/29/08 and indicated two group members, Respondent and her [REDACTED] [REDACTED].

A redetermination (DHS 1010) was completed by the Respondent on 8/3/09. The redetermination indicated that Respondent and her daughter were the two group members.

Another application (DHS 1171) was filed on 8/3/09 and the Respondent applied for FIP cash assistance benefits, as well as FAP, MA and CDC benefits and indicated two group members, Respondent and her child, [REDACTED]. The child's father is listed as [REDACTED]

The Birth Certificate for Respondent's [REDACTED] of birth, [REDACTED] listed the father as [REDACTED] r. Exhibit 1 pp 46

A W2 2010 Michigan Tax Return 1040 filed by [REDACTED] was made part of the evidence and noted that one child was claimed as a child exemption. Tax Return listed the address for [REDACTED] as [REDACTED] Exhibit 1 pp. 47

A W2 2010 Michigan Tax Return listed the address for [REDACTED] [REDACTED] Exhibit 1 pp. 50.

A redetermination (DHS 1010) was completed by the Respondent on 7/30/11. The redetermination notes a [REDACTED] as a group member and reported receipt of child support. The redetermination also requests that names of those persons not listed on the redetermination who are living with you be added.

Another application (DHS 1171) was completed on July 29, 2011 wherein the Respondent applied for FIP cash assistance. The application lists the Respondent and her two children, [REDACTED]. The Claimant specifically answered no to the question regarding whether [REDACTED] is in the home.

An Affidavit of Parentage was completed for [REDACTED] signed by [REDACTED] with a birth date of [REDACTED]. The address for [REDACTED] listed as [REDACTED]

An SER application was completed on July 11, 2012 for a moving expense. At the time, the Respondent listed [REDACTED] as a household member. The Claimant also noted [REDACTED] employer as [REDACTED]. Exhibit 1, pp. 78, 80. The application listed household income from [REDACTED] Mr. [REDACTED] signed the application.

A redetermination was completed on 8/30/12. The redetermination noted that as a household member, [REDACTED], had child support expenses in the amount of [REDACTED]. A new mailing address was provided. Five persons were listed as living in the household, including [REDACTED], listing a move in date [REDACTED] that they bought food and prepared meals together. Income source was from employment income from [REDACTED] earned [REDACTED]

The Department also subpoenaed employment records for [REDACTED]. The employment records listed [REDACTED] address as [REDACTED]. The W2 form for withholding listed the [REDACTED]. The reported pay information for 2007 listed [REDACTED]. All other pay stubs information from [REDACTED] ongoing listed [REDACTED] as [REDACTED]'s address.

Exhibit 1, pp 97

The investigator who investigated this matter and prepared a report dated January 13, 2012 did not appear at the hearing. The report lists many circumstantial hearsay conversations with various individuals. These alleged conversations for the most part reference no dates for the conversations. The report also purports to report conversations with both the Respondent and [REDACTED], however, again no dates are noted. The statements in the report are very vague and identifying details such as date, time and the location where the alleged conversations occurred are not presented nor do the alleged conversations indicate what period if any the alleged witness was speaking about.

By way of example only, the report states: "I was able to speak with [REDACTED] He states he lives with his grandmother. He admits he stays with [REDACTED] their son in common two nights per week. He is working full time at [REDACTED]. [REDACTED] He says he is at [REDACTED] home every day to watch their son while she is doing work first or work now that she is working for her new job at [REDACTED] This conversation does not establish that the witness is living with the Claimant.

The report notes a Post Office verification and states [REDACTED] receiving mail at [REDACTED] [REDACTED] however, no such verification was presented. Lastly, the report notes that the investigator spoke with the [REDACTED] and that they did not recognize [REDACTED] name or face and said they do not think he is riding the bus at all. The report does not indicate what the investigator showed the Authority. The statement cannot be given any weight for these reasons and does not establish any fact relevant to the Respondent's group living with her.

If the Department wishes to present this type of evidence, it must support its statements with testimony by the person who gathered the evidence or purportedly had the conversation so that that person's credibility can be evaluated.

Based upon the totally hearsay nature of the investigator's report presented by a third person who has no personal knowledge of the information, it is found that the evidence does not support an intentional program violation based upon Respondent's failure to report a group member living with her.

This determination was also influenced by the reporting made on the SER application signed by the Respondent and her boyfriend indicating they were living together, which at that date July 11, 2012 establishes a living together. Additionally, the documentary evidence presented such as tax returns and pay stubs were better evidence of where [REDACTED] resided. At no time prior to the SER application did the Department present any verification that it sought to determine whether the Respondent's reporting was reliable with respect to group size and whether her boyfriend was living there or which would support in any way that the Department did not believe that the information reported by Respondent was not reliable. BEM 212 (2/1/14). Based upon the evidence

reviewed and presented it is determined that the Department did not establish by clear and convincing evidence that an IPV has been committed.

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 (7/1/13), 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, because the Department did not establish and Intentional program violation it is not entitled to any disqualification of the Respondent from receiving FIP and FAP benefits.

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.

In this case, the Department's evidence as analyzed above was for the most part hearsay evidence and was not presented by the individual who investigated this matter and was deemed in large part unreliable. Additionally, the evidence does not establish that the Respondent had someone living with her who was not reported by her to the Department. During the periods of the alleged overissuance 12/1/2009 – 2/28/12 (FIP) and 10/1/2008 – 2/28/12 (FAP), the evidence did not establish that an overissuance was received as the Respondent's group size was not demonstrated to be other than what was reported on her numerous DHS applications and redeterminations.

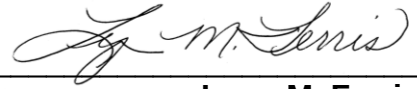
DECISION AND ORDER

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 not commit an intentional program violation (IPV).**
2. Respondent ☒ **did not receive an OI of program benefits** in the amount of [REDACTED] from the following program(s) ☒ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

The Department is ORDERED to

☒ delete the OI and cease any recoupment action.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 25, 2014

Date Mailed: April 25, 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.

LMF/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]