

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

IN THE MATTER OF:

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

Reg. No.: 2014-27580
Issue No(s): 1005; 3005
Case No.: ██████████
Hearing Date: July 10, 2014 and
July 17, 2014
County: Genesee (06)

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 three-way telephone hearing was held on July 10, 2014 and July 17, 2014, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG); Recoupment Specialist (RS), ██████████ (present only for July 17, 2014); and Assistant Attorney General ██████████ ██████████ from the State of Michigan Department of Attorney General.

Participants on behalf of Respondent included: Respondent, ██████████ his spouse, ██████████ ██████████ and Respondent's Authorized Hearing Representative (AHR)/attorney, ██████████.

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 benefits for
 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 20, 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 FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in income.
5. Respondent had did not have an 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 FAP fraud period to be June 1, 2011 to November 30, 2011, and May 1, 2012 to July 31, 2012. (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the FIP fraud period to be June 1, 2011 to November 30, 2011, and June 1, 2012 to July 31, 2012. (FIP fraud period).
8. During the fraud period, Respondent was issued \$10,733 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,440 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 \$9,293.
10. This was Respondent's first second third alleged IPV.
11. On April 9, 2014, the Michigan Administrative Hearing System (MAHS) sent Respondent a Notice of Disqualification Hearing, which scheduled an Intentional Program Violation (IPV) hearing on May 21, 2014.

12. On May 21, 2014, Respondent appeared at the IPV hearing with an attorney, which prompted the OIG agent to request an adjournment. The Administrative Law Judge (ALJ) granted the Department's request for adjournment.
13. On May 23, 2014, the ALJ sent both parties an Order Granting Adjournment.
14. On June 9, 2014, the MAHS sent Respondent a Notice of Disqualification Hearing, which re-scheduled an IPV hearing on July 10, 2014.
15. On July 10, 2014, all parties participated in the IPV hearing; however, a continuance of the hearing was necessary in order to resolve the issues involved in the hearing. All parties agreed to continue the hearing on July 17, 2014 and the ALJ subsequently sent all parties an Order Granting Continuation on July 11, 2014.
16. On July 14, 2014, the MAHS sent Respondent a Notice of Disqualification Hearing, which notified the parties of the continuation hearing scheduled on July 17, 2014.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 (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 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 (May 2014), 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 his FAP/FIP benefits because he failed to report his spouse's employment and wages to the Department, which caused an overissuance of FAP/FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (June 2011 and May 2012), 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.

At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report his spouse's income and that he intentionally withheld or misrepresented the information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP/FIP program benefits or eligibility.

First, the Department presented Respondent's application dated November 18, 2010, to show that the Respondent was aware of his responsibility to report changes. See Exhibit 1, pp. 11-30.

Second, the Department presented Respondent's redetermination dated October 7, 2011, which the Department alleged Respondent's spouse first reported her employment to the Department. See Exhibit 1, pp. 31-34. In the redetermination, Respondent indicated the spouse's employment with 15 expected hours of work per pay period and a start/end/change date of October 31, 2011. See Exhibit 1, p. 32. However, it was unclear if October 31, 2011 represented a start, end, or change date. See Exhibit 1, p. 32. The Department testified that this was the first time it became aware of the spouse's employment and it interpreted the October 2011 date to be her start date. It also appeared that pay stubs were submitted with the redetermination because the Department's evidence packet included the pay stubs with a received date of October 7, 2011. See Exhibit 1, pp. 47-50. It should be noted that the spouse testified that the October 2011 date represented her employment approximate end date due to being laid off.

Third, the Department presented the spouse's Verification of Employment and accompanying documentation dated October 4, 2012. See Exhibit 1, pp. 35-38. The

employment verification indicated the spouse began employment on April 11, 2011 and that her employment was expected to end November 2012 due to her job being seasonal. See Exhibit 1, p. 35.

Fourth, the Department presented an additional application dated October 11, 2012. See Exhibit 1, pp. 39-46. In the application, Respondent indicated the spouse's same employment, however, there was a change to the job on September 1, 2012. See Exhibit 1, p. 42. Moreover, the application indicated a job start date of April 1, 2011. See Exhibit 1, p. 42.

At the hearing, Respondent's spouse argued that she did conceal her income. Moreover, Respondent's spouse contended that she timely reported her employment to the Department on multiple occasions for both alleged fraud/OI periods. First, the spouse testified that she contacted the Department in early April 2011 to inform her DHS worker that she had obtained employment.

Then, on August 9, 2011, the spouse testified that she submitted a change report (DHS-2240) to the Department that reported her employment and a start date of April 11, 2011. See Exhibit B, pp. 3-4. It should be noted that the change report was generated December 15, 2010 and there is a notation on the document stating "Second Notice." See Exhibit B, p. 3. The spouse testified that she previously submitted a change report to the Department in order to report her employment, but never kept a copy of it. Moreover, the spouse testified that she kept this blank copy from December 15, 2010 because she did not need to complete this form at that time. Thus, the spouse testified that she notated "Second Notice" on the change report because she wanted to inform that Department that this is the second time she is submitting the change report.

Additionally, the spouse provided a wage match client notice dated July 26, 2011, which the Department requested verification of the spouse's employment, but referenced a different employer. See Exhibit B, p. 1. The spouse provided a letter to the Department dated August 9, 2011, which stated she never worked for this different employer. See Exhibit B, p. 2. Furthermore, the letter indicated that a change report was sent in May 2011 regarding the employment at issue and that she never received any contact back from the Department. See Exhibit B, p. 1. It should be noted that the spouse testified she submitted the first change report with pay stubs on or around June 2011 upon a request by the Department. Finally, Respondent provided a copy of her employer's phone bill statement to show that she actually sent the change report/letter to the Department on August 9, 2011. See Exhibit A, p. 1.

The spouse also provided a Verification of Employment dated August 15, 2011, which was completed by her employer. See Exhibit B, pp. 5-6. This document indicated her employment began on April 11, 2011. See Exhibit B, p. 5.

As to the spouse's second OI period, the spouse testified that she also reported to the Department that she returned to the employer due to it being a seasonal job. The spouse provided another wage match client notice generated on March 22, 2012 and a

verification of employment completed by her employer dated April 20, 2012. See Exhibit B, pp. 7-9. These documents indicated wages from July 8, 2011 to November 17, 2011, and then she received wages from March 29, 2012 to April 12, 2012. See Exhibit B, p. 9. There appeared to be no wages received from November 18, 2011 to March 28, 2012. See Exhibit B, p. 9.

In summary, the evidence presented that the spouse was employed from on or around April 2011 to November 2011. Then, due to her seasonal employment, she was not employed from December 2011 to March 2012. Subsequently, the spouse returned to her employer and worked from late March 2012 to on or around November 2012. Respondent's spouse's main argument is that she timely reported her employment to the Department for both alleged fraud/OI periods. However, the Department argues that the spouse did not timely report her employment to the Department for the alleged fraud/OI periods in accordance with Department policy.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

First, the Department argued that the spouse's employment was not timely and/or correctly reported. The Department presented multiple documents to show that she did not timely report her employment start date of April 2011 or when she subsequently returned to work in late March 2012. Moreover, the Department presented the redetermination dated October 7, 2011, to show that she improperly put her start date of October 31, 2011, when instead, it was April 11, 2011. See Exhibit 1, pp. 31-34. It is reasonable for the Department to conclude that the documentation shows the spouse's earnings were reported after the employment had begun. However, this evidence actually shows that the Respondent's spouse reported the income information to the Department. This shows that Respondent is not intentionally withholding or misrepresenting the income information, even though the Department alleges it was untimely.

Second, Respondent's spouse credibly testified that she timely reported her income information to the Department. As to her employment start date of April 2011 (first alleged fraud/OI period), the spouse credibly testified that she notified the Department in April 2011 that she would begin employment. Moreover, the evidence presented that the spouse sent a letter to the Department on August 9, 2011, in which she stated she originally provided a change report notifying the Department of her employment in May 2011. See Exhibit B, p. 2. In fact, the evidence presented that the spouse provided the Department with a second notice of her employment start date on August 9, 2011. See Exhibit B, pp. 3-4.

Additionally, as to her employment start date of late March 2012 (second alleged fraud/OI period), the spouse credibly testified that she notified the Department that she would again start employment. Moreover, the spouse provided credible evidence dated April 20, 2012, showing that she and/or employer reported her employment started on March 29, 2012. See Exhibit B, pp. 7-9.

Therefore, 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 his FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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/FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP/FIP program. BAM 720, p. 16.

FAP 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 group or provider actually received minus the amount the group was eligible to receive. BAM 705 (July 2014), p. 6 and BAM 715 (July 2014), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is agency error or client error.

An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) or the Department of Information and Technology staff or department processes. BAM 705, p. 1. Examples include available information was not used or was used incorrectly, etc...See BAM 705, p. 1.

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, p. 1.

BAM 105 states changes may be reported in person, by mail or by telephone. BAM 105, p. 8. The DHS-2240, Change Report Form, may be used by clients to report

changes. BAM 105, p. 8. However, it is not mandatory that changes be reported on the DHS-2240. BAM 105, p. 8. Changes must be reported timely even if the client does not have a DHS-2240. BAM 105, p. 8.

In this case, the evidence presented that an agency error is present in this situation because Respondent's spouse timely reported her employment via telephone and/or mail to the Department; however, the Department failed to act on this reported change. See BAM 105, p. 8.

In establishing the OI amount for both OI periods, the Department presented FAP budgets for the time periods of June 2011 to November 2011 and May 2012 to July 2012. See Exhibit 1, pp. 85-138. However, a review of the FAP budgets found that the Department improperly calculated the overissuance. For FAP client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 715, p. 8. A review of all of the FAP budgets indicated that the Department did not allow the 20 percent earned income deduction. See Exhibit 1, pp. 85-138.

Nonetheless, as stated above, it is found that there is an agency error present in this case. For agency error, policy does not state to exclude the 20 percent earned income deduction on the unreported earnings. See BAM 705, pp. 1-12. In essence, for agency error calculations, the Department would allow the client the 20 percent earned income deduction because it is the Department that caused the incorrect action. See BAM 705, p. 1. As such, the Department improperly calculated the FAP budgets because it failed to provide the Respondent the 20 percent earned income deduction. Thus, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to properly calculate the FAP OI amount.

FIP Overissuance

As stated above, an agency error is present in this case. Moreover, there is no exclusion of a 20 percent earned income deduction policy to the FIP overissuance calculation as compared to the FAP calculation. It should first be noted that the spouse did not dispute the income and/or earnings used to calculate her earned income amounts.

The overissuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12 month period is later. BAM 705, p. 5. To determine the first month of the overissuance period for changes reported timely and not acted on, the Department allows time for: the full standard of promptness (SOP) for change processing and the full negative action suspense period. BAM 705, p. 5.

As to the first OI period (June 1, 2011 to November 30, 2011), applying the agency error overissuance period, it is found that the appropriate OI period begin date is June 1, 2011. See BAM 705, p. 5; Exhibit 1, p. 35; and Exhibit B, p. 5.

As to the second OI period (June 1, 2012 to July 31, 2012), applying the agency error overissuance period, it is found that the Department applied the inappropriate OI period begin date of June 1, 2012. See BAM 705, p. 5; Exhibit 1, p. 38; and Exhibit B, p. 9.

In establishing the OI amount, the Department presented FIP budgets for the OI period of June 1, 2011 to November 30, 2011 and June 1, 2012 to July 31, 2012. See Exhibit 1, pp. 55-84. The budgets included Respondent's spouse's income that was not previously budgeted. See Exhibit 1, pp. 37-38. A review of the OI budgets found them to be fair and correct. See BAM 705, p. 8. Thus, the Department is entitled to recoup \$4,696 in FIP benefits (\$3,522 for first OI period plus \$1,174 for second OI 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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$4,696 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the FAP OI and cease any FAP recoupment action; and
- reduce the OI to \$4,696 for the FIP periods of June 1, 2011 to November 30, 2011, and June 1, 2012 to July 31, 2012, and initiate recoupment procedures in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 22, 2014

Date Mailed: July 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.

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
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