

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

IN THE MATTER OF:



Reg. No.: 2014-27982
Issue No(s): 1005;3005
Case No.: [REDACTED]
Hearing Date: June 11, 2014
County: Genesee (06)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 June 11, 2014, from Detroit, Michigan. The Department was represented by [REDACTED] 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) and Food Assistance Program (FAP) 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 FIP and FAP benefits?

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 24, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in household circumstances.
5. Respondent 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 fraud period for the FIP is October 1, 2006, to December 31, 2006, and April 1, 2007, to July 31, 2007 (fraud period).
7. During the October 1, 2006, to December 31, 2006, fraud period, the Department alleges that Respondent was issued \$1403.50 in FIP benefits and from April 1, 2007, to July 31, 2007, the Department alleges that Respondent was issued \$1404.50 in FIP benefits. The Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$2808.
9. The Department's OIG indicates that the time period it is considering the fraud period for the FAP is September 1, 2006, to December 31, 2006, and March 1, 2007, to July 31, 2007 (fraud period).
10. During the September 1, 2006, to December 31, 2006, fraud period, the Department alleges that Respondent was issued \$858 in FAP benefits and from March 1, 2007, to July 31, 2007, the Department alleges that Respondent was issued \$918 in FAP benefits. The Department alleges that Respondent was entitled to \$345 in such benefits from September 1, 2006, to December 31, 2006 and that Respondent was entitled to \$398 in FAP benefits from March 1, 2007, to July 31, 2007.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1033.
12. This was Respondent's first alleged IPV for both the FIP and FAP.

13. A notice of hearing was mailed to Respondent at the last known address and 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, 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 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 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 alleged that Respondent applied for and received benefits on behalf of her son; however, Respondent was not the child's primary caretaker, thereby making her ineligible for benefits on his behalf. The Department alleged that Respondent's failure to correctly identify her household circumstances resulted in an OI for the FIP and FAP program. For FIP and FAP purposes, the primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. PEM 210 (July 2006 and July 2007), p. 2; PEM 212 (July 2005 and January 2007), pp. 1-3.

In support of its contention that Respondent committed an IPV, the Department presented assistance applications that Respondent submitted to the Department on August 29, 2006, and March 22, 2007, on which she reports that her son is living with her in the home and is a group member. This is sufficient to establish that Respondent was advised of her responsibility to accurately report her household circumstances to the Department and that she was made aware of the penalties for failing to do so.

The Department argued that in July 2007, Respondent was incarcerated and a Child Protective Services (CPS) investigation was conducted. The Department stated that the CPS investigation revealed that Respondent's child was not in her care and had not

been since 1998, when legal guardianship of the child was given to Respondent's sister. (Exhibit 1, p.28). The Department provided the CPS Investigation Summary for review; which established that Respondent's son had been in the care of his aunt and grandmother since he was one year old and that he continued to be through July 2007. (Exhibit 1, pp.26-34).

The evidence presented was sufficient to show, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information to the Department for the purpose of establishing, maintaining, increasing or preventing reduction of her FIP and FAP benefits. Thus, the Department satisfied its burden of establishing that Respondent committed an IPV of FIP and 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 has satisfied its burden of establishing that Respondent committed an IPV of the FIP and FAP programs. Because this was Respondent's first IPV, she is subject to a one year disqualification under the FIP and FAP programs.

Overissuance

The Department has alleged an OI of FIP and FAP benefits resulting from Respondent's receipt of benefits on behalf of her child, of whom was not in her care and custody. 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 FIP and 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 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

The Department alleged that from October 1, 2006, to December 31, 2006, Respondent was issued \$1403.50 in FIP benefits and from April 1, 2007, to July 31, 2007, Respondent was issued \$1404.50 in FIP benefits. The Department alleges that Respondent was entitled to \$0 in such benefits during this time period. A review of the Benefit Summary Inquiry provided by the Department reveals however, that from October 1, 2006 to December 31, 2006, Respondent was actually issued \$1403.5 and from April 1, 2007 to July 31, 2007, Respondent was actually issued \$529.50. (Exhibit 1, pp. 35-36). Therefore, because as discussed above, Respondent was not the primary

caretaker of her child during the period at issue, she was not entitled to receive FIP benefits on his behalf. As such, the Department is entitled to recoup the \$1,933 in FIP benefits that it issued to Respondent during the fraud period.

The Department established that the State of Michigan issued \$858 in FAP benefits from September 1, 2006, to December 31, 2006, and \$918 in FAP benefits from March 1, 2007, to July 31, 2007. (Exhibit 1, pp.37-38). The Department presented FAP OI budgets for the months at issue which establish that once Respondent's son was removed as a FAP group member, Respondent was only eligible to receive \$345 in FAP benefits from September 1, 2006, to December 31, 2006 and \$398 in FAP benefits from March 1, 2007, to July 31, 2007. (Exhibit 1, pp.39-49). Thus, the Department is entitled to recoup or collect from Respondent \$1033, the difference between the \$1776 in FAP benefits actually issued to her and the \$743 in FAP benefits she was eligible to receive 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 committed an IPV of the FIP and FAP.
2. Respondent did receive an OI of program benefits in the amount of \$1933 for FIP and \$1033 for FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1933 for FIP and \$1033 for FAP in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FIP and FAP for a period of 12 months.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 3, 2014

Date Mailed: July 3, 2014

2014-27982/ZB

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.

ZB/tlf

cc:

