

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2014-30299
Issue No(s): 1005; 3005
Case No.: ██████████
Hearing Date: May 28, 2014
County: Saginaw (00)

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 telephone hearing was held on May 28, 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 March 8, 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 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 for FAP is July 1, 2012 to September 30, 2012 and for FIP is April 1, 2012 to September 30, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$3,526 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$126 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$3,400.
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 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 (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 her FAP/FIP benefits because she failed to report her 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 (December 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.

The Department's OIG indicates that the time period it is considering the fraud period for FAP is July 1, 2012 to September 30, 2012 and for FIP is April 1, 2012 to September 30, 2012 (fraud period). At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility.

First, the Department presented Respondent's application dated December 5, 2011, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 10-30. It should be noted that Respondent listed an employer and that she voluntarily reduced hours worked due to pregnancy and it also indicated maternity leave. See Exhibit 1, pp. 22-23. Respondent listed that her type of work was a care worker and a start date of November 2009. See Exhibit 1, p. 23.

Second, the Department presented an application dated May 17, 2012, to show that it became aware of Respondent's first unreported earned income. See Exhibit 1, p. 31 and 44. The application indicated that her employment began either in March of 2011 or 2012, however, the handwriting was not legible. See Exhibit 1, p. 44. It should be noted that under the employment changes, Respondent listed the direct care position again as previously shown in the application dated December 5, 2011. See Exhibit 1, p. 43. The Department also presented an application dated July 17, 2012, which again reported the first employer but with a different start date. See Exhibit 1, pp. 55 and 68. Finally, the Department presented an State Emergency Relief (SER) application dated September 18, 2012, which Respondent reported the first employer and a start date of March 2011. See Exhibit 1, pp. 76 and 78.

Third, the Department presented the Verification of Employment and income information from Respondent's first employer dated January 21, 2013. See Exhibit 1, pp. 88 - 93. The Verification of Employment and additional documents indicated that Respondent was employed from March 29, 2011, ongoing. See Exhibit 1, pp. 46-48.

Fourth, the Department presented Work First case notes for the time period of September 17, 2009 to September 27, 2012. See Exhibit 1, pp. 81-83. On June 10, 2010, the case notes indicated that the Respondent had found employment. See Exhibit 1, pp. 82-83. On December 7, 2011, the case notes notated that Respondent had employment at the second employer, which the Department alleges is her second unreported earned income. See Exhibit 1, p. 82. The case notes further indicated that her employment is as a direct care worker. See Exhibit 1, p. 82. It should be noted that the direct care worker employer listed in the applications dated December 5, 2011 and May 17, 2012, was different than the one listed in the Work First case notes. See Exhibit 1, pp. 22-23, 43 and 82.

Fifth, the Department presented the Verification of Employment and income information from Respondent's second employer dated February 1, 2013. See Exhibit 1, pp. 94 - 98. The Verification of Employment and additional documents indicated that Respondent was employed from November 23, 2009 to April 6, 2012. See Exhibit 1, pp. 94 - 98.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld information.

In regards to the first employer, the Department presented Respondent's applications dated May 17, 2012, July 17, 2012, and September 18, 2012, in which she reported her first employer. See Exhibit 1, pp. 31-78. It is understandable that the applications show her earnings were reported after her employment had begun and it is persuasive that she did not report the income within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Nevertheless, this evidence actually shows that the Respondent reported her first employer's employment information to the Department. This shows that Respondent is not intentionally withholding or misrepresenting the income information.

In regards to the second employer, the employment verification showed that she was employed from November 23, 2009 to April 6, 2012. See Exhibit 1, p. 94. A review of the applications did not indicate Respondent listing the second employer. See Exhibit 1, pp. 10-78. Also, it is not known if whether the direct care worker notated in the applications dated December 5, 2011 and May 17, 2012, was different than the one listed in the Work First case notes. See Exhibit 1, p. 82. As stated above, the type of work Respondent did for the second employer was a direct care worker. Respondent previously listed such type of work, but referenced a different employer name. See Exhibit 1, pp. 21-22, 43, and 82. Nevertheless, Respondent did report the second employer to the Work First program. See Exhibit 1, pp. 81-82. As stated above, it is persuasive evidence that she did not report the income within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. However, this evidence does not show she intentionally withheld or misrepresented the income information because she reported it.

It should also be notated that Respondent also reported the direct care worker position as well in the application dated December 5, 2011 and May 17, 2012. This is notated in this decision because the OI budgets appear to include the income from this employer as shown in the Wage Match documents. See Exhibit 1, p. 84.

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 her FAP/FIP 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

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

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 (May 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of her earned income for both employers timely. Based on this information, it is persuasive evidence that an OI is present due to client error.

In regards to policy, Respondent did not report the earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Thus, an OI was present for FAP benefits.

Applying the overissuance period standards and in consideration of the Respondent receiving the unreported income from the first employer on March 29, 2011 and the second employer on November 23, 2009, the Department determined that the OI period began on July 1, 2012. See Exhibit 1, pp. 2, 88, and 94. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5. It should be noted that the Department's OIG report indicated that Respondent should have been a simplified reporter, in which case there was no OI in the FAP benefits until July 1, 2012. See Exhibit 1, p. 2.

Additionally, 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 715, p. 6.

In this case, the Department presented OI budgets for July 2012 to September 2012. See Exhibit 1, pp. 125 – 108. The budgets included Respondent's income from the first employer that was not previously reported and the Wage Match information. See Exhibit 1, pp. 84 and 88-91. A review of the OI budgets for July 2012 to September 2012 found them to be fair and correct. See BAM 715, p. 8. Thus, the Department established an OI amount of \$841 for the FAP benefits.

FIP Overissuance

As shown above, there is persuasive evidence that an FIP OI amount is present as well due to client error.

Applying the overissuance period standards and in consideration of the Respondent receiving the unreported income from the first employer on March 29, 2011 and the second employer on November 23, 2009, the Department determined that the OI period began on April 1, 2012. See Exhibit 1, pp. 2, 88, and 94. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

In this case, the Department presented OI budgets for April 2012 to September 2012. See Exhibit 1, pp. 105 - 124. The budgets included Respondent's income from the first and second employer that was not previously reported and the Wage Match information. See Exhibit 1, pp. 84 and 88-98. A review of the OI budgets for April 2012 to September 2012 found them to be fair and correct. See BAM 715, p. 8. Thus, the Department established an OI amount of \$2,559 for the FIP benefits. This results in a total FAP/FIP OI amount of \$3,400 that the Department is entitled to recoup.

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 did not commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$3,400 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$3,400 in accordance with Department policy.



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

Date Signed: June 9, 2014

Date Mailed: June 9, 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]
[REDACTED]
[REDACTED]
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