

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

IN THE MATTER OF:



Reg. No.: 201430755
Issue No(s).: 3005
Case No.: [REDACTED]
Hearing Date: April 23, 2014
County: Genesee (02)

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 23, 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 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 benefits for FAP?

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 January 16, 2003, 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 FAP benefits issued by the Department.
4. Respondent was aware of her obligation to report changes in circumstances and did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2003 through March 31, 2004 (fraud period).
6. During the fraud period, Respondent was issued \$2997 in FAP benefits by the State of Michigan, and the Department alleges that she was entitled to \$824 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2173.
8. This was Respondent's first alleged IPV.
9. 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 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 (July 2013), p. 12.

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 (July 2013), 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 contends that Respondent committed a FAP IPV because she failed to report her son's income resulting in an overissuance of FAP benefits for the period between July 1, 2003 and March 31, 2004. In support of its case, the Department presented (i) a March 22, 2003 application submitted by Respondent to the Department; (ii) an employment verification showing that Respondent's son had earned income between July 2003 and February 2004; (iii) a printout showing FAP issuances to Respondent between February 2003 and April 2004; (iv) FAP OI budgets for July 2003 to March 2004 showing the FAP benefits Respondent was eligible to receive if her son's earned income was included in the calculation of her FAP budget; and (v) a June 30, 2003 letter from the Department to Respondent advising her of her son's eligibility for FAP benefits as a college student.

In the March 22, 2003 application, Respondent listed the son at issue as a household member. Because the son was under 22 years old at the time of application, he was a mandatory FAP group member. PEM 212 (January 2003), p. 2. Further, because the son was not under age 18, his income would be considered in the calculation of the household's FAP eligibility and allotment. PEM 500 (October 2003), p. 6. However, a further review of the application shows that Respondent had sought to exclude the son as a FAP member. Therefore, it is not clear that Respondent was aware that her son was a FAP group member and that, consequently, she was required to report her son's income. Further, the June 30, 2003 letter from the Department to Respondent advised her concerning the son's eligibility for FAP benefits when he became a college student and had employment. It does not support the Department's position that Respondent knew that she was obliged to report her son's income and that she purposely withheld information concerning his income in order to maintain or prevent reduction of FAP benefits. Thus, the Department has failed to establish that Respondent committed an IPV concerning her FAP case.

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. 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 failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP program.

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. For FAP OIs, 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), pp. 1, 6; BAM 705 (July 2013), p. 6.

In this case, the Department contends that when Respondent's son's income is included in the FAP budgets for July 1, 2003 through March 31, 2004, Respondent was eligible to receive only \$824 of the \$2997 actually issued to her during this period, resulting in an OI of \$2173. In support of its case, the Department presented FAP OI budgets for each month between July 2003 and March 2004 showing the recalculated FAP budget if Respondent's son's income was included in the budgets.

It is first noted that the Department's evidence did not establish the income the son received in March 2004; therefore, that FAP OI budget could not be reviewed. Furthermore, Department policy provides that a college student who does not meet the criteria in PEM 245 (which includes employment for at least 20 hours per week) is a non-group member and his income and assets is not considered when determining the FAP group's eligibility. PEM 212 (January 2003), p. 6; PEM 245 (October 2002), pp. 2-4. The June 30, 2003 letter from the Department to Respondent indicates that the son at issue would be enrolling in college. Assuming the son was in college, the Department failed to establish that he was working for more than 20 hours weekly during July 1, 2003 and March 31, 2003. As such, the Department failed to establish that his income should have been included in the calculation of Respondent's FAP budgets during those periods. While the son would not be included as a FAP group member if he was an ineligible student, the FAP OI budgets presented do not address an OI on this basis. Thus, the Department has failed to establish that Respondent received an OI of FAP benefits between July 1, 2003 and March 31, 2004.

While the Department has failed on the merits to satisfy its burden of showing that it was entitled to collect the \$2173 in FAP benefits it alleges were overissued to Respondent, it is noted that an additional concern was presented in this matter due to the Department's considerable delay in instigating the IPV hearing. Department policies require that the OIG refer suspected IPV cases for administrative hearings within 18 months of its investigation. PAM 720 (January 2004), pp. 8-9; BAM 720 (July 2013), pp. 11-12. The evidence in this case showed that the Department became aware of the alleged overissuance by 2006 at the latest, with the Department interviewing Respondent concerning the matter on December 5, 2006. However, the OIG did not request an IPV hearing until January 16, 2014, more than 7 years after it became aware of alleged IPV and interviewed Respondent concerning the circumstances at issue. The OIG egregiously delayed requesting a hearing in this case, jeopardizing a client's ability to counter claims against her and raising issues concerning the fundamental fairness of the proceeding. See *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993). The legitimacy of the Department's IPV action is also questionable in light of the fact that it was not requested within the six-year statute of limitations for fraud cases. MCL 600.5813; see also *Blusal Meats, Inc. v US*, 638 F Supp 824, 831-832 (SDNY, 1986),


aff'd 817 F2d 1007 (CA 2, 1987). The Department's failure to abide by timeliness standards provides an additional basis to deny the Department's allegations.

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 **not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did **not** receive an OI of program benefits in the amount of \$2173 from the FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 16, 2014

Date Mailed: May 16, 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.

ACE/tlf

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