

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

IN THE MATTER OF:



Reg. No.: 2014-31518
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 30, 2014
County: Wexford County DHS 00

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 30, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG) and [REDACTED] FIM, Hearing Coordinator also appeared.

Participants on behalf of Respondent included: the Respondent and Natasha Manning a witness for the Respondent also appeared.

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 1/17/14, 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(s) 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 FIP May 1, 2009 through November 30, 2009; FAP May 1, 2009 through April 40 2010 (FAP PERIOD 1) AND January 1, 2011 thogut September 30, 2011(FAP PERIOD 2) (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 1 [REDACTED] (Period 1) and [REDACTED] (period 2) in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] (Period 1) and \$ [REDACTED] (Period 2) 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].
11. The total overissuance for FIP and FAP alleged was [REDACTED]
12. This was Respondent's first second third alleged IPV.
13. 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 5/1/09 - 11/30/09. The alleged fraud period for FAP benefits involves two periods of time hereafter referred to as Period 1, 5/1/09-4/30/10 and Period 2, 1/1/11-9/30/1.

The Department has alleged that the Respondent reported her two young children as living with her when they were not living with her. The Claimant testified credibly under oath that her boys lived with her during the periods in question except for one time during May and June of 2011 at which time one of her boys lived with their grandfather as she was moving and wanted her son to complete the school year. The documentary evidence presented and contained in the hearing packet is summarized as follows.

Several applications were filed by the Claimant dated 1/19/11 and 4/20/10 and two semiannual contacts were completed in October 2009 and May 2011. The Redetermination completed during October 21, 2011 indicates that the Claimant reported that her son [REDACTED] had moved out one week prior. Exhibit 1, pp 74. This reporting on the redetermination indicates a timely reporting. The semiannual contact reports indicate that both her sons are living with her.

The Department presented a Documentation Record prepared on September 13, 2011 by [REDACTED]. This individual was not present at the hearing. The record reports that the Respondent's children have never been in her home dating back to May 21, 2009 per statements of DHS Protective Services officials, (unnamed) and family members (unnamed) and elementary school records. The times, dates and names of the DHS workers and family members are not disclosed and thus it is determined that these hearsay statements are not admissible as the person who wrote the report was not presented and the information is totally unreliable. 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. The statement(s) cannot be given any weight for these reasons and does not establish any fact relevant to the Respondent's children living with her.

The Department also presented evidence by way of a letter from the [REDACTED] Consolidated Schools signed by the Mesick School Social Worker. The letter was written on September 15, 2011. The letter states: "We have been asked to verify that [REDACTED] is living with and supervised by his grandfather, Mr. [REDACTED] s has been taking care of [REDACTED] and his little brother throughout his time here at [REDACTED] school. [REDACTED] is walked into the building and picked up by [REDACTED] and to the best of our knowledge is taking care of him. [REDACTED] address is [REDACTED] Road, [REDACTED] [REDACTED] Sometimes [REDACTED] does take the bus home. No actual school registration documents were submitted or other contact information was submitted.

The Claimant submitted a letter from her Apartment Complex manager. The letter indicates that from January 2009 through November 2009 he rented a place to the Respondent and her children. He described that her children were polite and well behaved. The statement was signed and notarized for the signature. Claimant Exhibit 1, pp1.

The Claimant also produced a document generated by the [REDACTED] and sent to the Claimant at her address that the Claimant's son [REDACTED] was eligible to receive free lunch. The letter is dated August 24, 2011. Claimant Exhibit 1, pp 2. The Claimant credibly testified that her son did not live with her for a period of one and half months in May and June 2011 but this admission does not support intent to obtain food assistance benefits through fraud and intentional non-disclosure.

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 an Intentional program violation it is not entitled to any disqualification of the Respondent.

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 did not establish an IPV for any of the time periods. Based upon the statement made under oath by the Respondent that during May and June 2011 the Respondent's son [REDACTED] who was in school stayed with his grandfather and her other son stayed with her it is determined that the Department is entitled to a finding of FAP overissuance for that period only. The Respondent received [REDACTED] in FAP benefits monthly based upon a group size of 3 members for May and June 2011, the Respondent was entitled to FAP benefits based upon a group size of 2 members to received \$3 [REDACTED] and thus was overissued [REDACTED] a month for both May and June 2011 for a total of \$ [REDACTED] which the Department is entitled to recoup. RFT 260 (1/1/10)

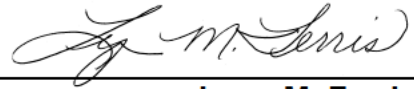
DECISION AND ORDER

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 [REDACTED] of from the following program(s) FIP FAP SDA CDC MA.
3. Respondent **did 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

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



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

Date Signed: May 13, 2014

Date Mailed: May 14, 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

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