

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

IN THE MATTER OF:

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

Reg. No.: 2014-31928
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 12, 2014
County: Genesee (25-06)

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 June 12, 2014, from Detroit, Michigan. The Department was represented by ██████████
████████████████████ Respondent ██████████
appeared at the hearing and testified.

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 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 March 17, 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 FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report income.
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 is June 1, 2012, to September 30, 2012.
7. During the fraud period, the Department alleges that Respondent was issued \$1,468 in FAP benefits by the State of Michigan and was entitled to \$48 in such benefits.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,420.
9. This was Respondent's first alleged IPV.
10. 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 (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 concerning his FAP benefits because he intentionally failed to report his employment income from

██████████ (Employer 1) and ██████████ (Employer 2) and his wife's Retirement Survivors and Disability Insurance (RSDI) income from the Social Security Administration. At the hearing, Respondent credibly testified that he had informed his worker of his employment at Employer 1, a temporary staffing agency, and at Employer 2, the company that offered him permanent employment after he was placed there by Employer 1, shortly after he was offered employment by each employer, as well as his wife's RSDI income. The Department was unable to counter Respondent's testimony concerning the information he provided to his worker and acknowledged that Respondent may have timely reported his income to the Department. The Department also acknowledged that it only became aware of Respondent's employment at Employer 1 and Employer 2 and his wife's RSDI income when Respondent disclosed it in his redetermination and that he had been cooperative with providing any requested documentation. The evidence presented fails to establish that Respondent intentionally withheld or misrepresented information concerning his household's income for the purpose of maintaining or increasing FAP eligibility. Thus, the Department has failed to establish that Respondent committed an IPV of his 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 an 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 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. 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 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

In this case, the Department established that Respondent received \$367 in monthly FAP benefits from June 2012 to September 2012. To establish the OI amount, the Department presented the original FAP budgets used to calculate Respondent's eligibility for \$367 in monthly FAP benefits for June 2012 through September 2012 with handwritten notations showing the changes to the budgets resulting when Respondent's income from Employer 1 and Employer 2 and Respondent's wife's RSDI income were

considered in the calculation of Respondent's FAP eligibility. Each of the revised budgets was reviewed. The Department properly calculated Respondent's earned income from Employer 1 and Employer 2. BAM 705 (July 2012), p. 6. When this earned income and Respondent's wife's RSDI income are considered in Respondent's FAP budget, a review of the budgets shows that the Department properly determined that Respondent was eligible for \$16 in FAP benefits for June 2012 and for July 2012 and \$0 in FAP benefits for August 2012. BEM 556 (October 2011), pp. 1-6; RFT 260 (October 2011), pp. 13, 19.

However, with respect to the September 2012 budget, a review of Respondent's pay history from Employer 2 shows that deductions for child support were taken from Respondent's weekly September 2012 gross income that totaled over \$684. The September 2012 budget only reflects a child support deduction totaling \$173.80. Because the September 2012 budget does not accurately reflect the deductions available to Respondent that the Department should have been aware of at the time it calculated the FAP OI, the Department has failed to establish an OI for September 2012. See BEM 554 (January 2011), pp. 4-6. Therefore, the \$351 the Department alleges was overissued to Respondent in September 2012 is removed from the \$1,420 OI sought.

Based on the overissued benefits established for June, July and August 2012, the Department is entitled to recoup and/or collect from Respondent \$1,069.

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** receive an OI of program benefits in the amount of \$1,069 from the FAP program.

The Department is ORDERED to reduce the OI to \$1,069 for the period June 2012 to August 2012, and initiate recoupment and/or collection procedures for the amount of \$1,069 in accordance with Department policy.



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

Date Signed: June 17, 2014

2014-31928/ACE

Date Mailed: June 17, 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/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]