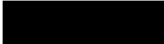


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**


IN THE MATTER OF:



Reg. No.: 2014 31954
Issue No(s): 3005
Case No.: 
Hearing Date: May 21, 2014
County: Muskegon (61)

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 May 21, 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 18, 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 to the Department when her income level exceeded \$ [REDACTED].
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 May 1, 2007 through December 31, 2011 (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 [REDACTED] 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 [REDACTED].
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 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 evidence presented demonstrates that the Claimant applied for food assistance on January 18, 2007 and reported her employment, her hourly rate of \$ [REDACTED] and 32 hours of employment. The application notes that the pay was unusual at that time due to it being the holidays. The Claimant also submitted an SER application on November 26, 2007 and an application dated 12/14/07, where she again reported her income and hours, same rate of pay and same hours. On the SER application, the Claimant reported income from employment for 11/29/07 as [REDACTED] and the verification shows on 11/30/07 receipt of \$ [REDACTED]. On 11/29/07, the Claimant also received [REDACTED]. It is clear that due to varying hours worked, the Claimant received more income than what was previously reported.

The Department did not produce verifications of employment before the fraud period even though there were two applications in November and December 2007, which would have required verification of income. Therefore overall, the Department did not establish that the Claimant failed to provide the Department information about her income. The original verification provided with the January 2007 application by the employer indicates that hours vary and provided a differential pay rate and notes due to holidays the income was not usual. Exhibit 1 pp, 38 and 39. The Department now seeks to establish an Intentional Program Violation based upon a failure of Respondent to report when Respondent's income exceeded \$2167 based upon an Eligibility Notice sent to the Claimant on January 18, 2007. pp. 18. The Department found that the Respondent's income exceeded the \$2167 income limit beginning April 2007. The alleged fraud period claimed is May 1, 2007 through December 31, 2007. Based upon the evidence presented, while the Department may have demonstrated that the Respondent did not report as required, it did not present or meet the clear and convincing evidence standard necessary to prove intent to commit fraud so that more FAP benefits can be received than the Claimant was otherwise entitled to was not shown. Therefore, an IPV has not been established.

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, the Department did not established by clear and convincing evidence that an IPV occurred and thus has not established that its request for disqualification should be granted.

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 presented Food Assistance Budgets for each month of the overissuance period, an overissuance summary and earnings records based upon Respondent's employer's verification of income from employment to support the earnings used by the Department to recalculate the FAP benefits and determine the overissuance amounts for each month. Exhibit 1, pp.40 – 43. The FAP budgets and calculations were very clearly presented and verified and therefore demonstrated that when the Claimant's unreported income was considered, the Claimant was not entitled to the full amount of Food Assistance Benefits received by her. The budgets properly calculated earned income correctly and unreported earned income correctly. After a review of the budgets it is determined that the calculations to determine overissuance are correct. Because the actual income from the Respondent was not reported, once she exceeded the FAP income limit of [REDACTED], the Department calculated the benefits for FAP which did not include the Respondent's correct earnings. Based upon a review of the earnings received that were not included by the Department when calculating FAP and a review of the FAP budgets presented, it is determined that the Respondent was not entitled to receive the FAP benefits she received except [REDACTED] as the group's income for the period in question was more than used to calculate benefits. Exhibit 1 pp.46 - 59. Therefore, the Department did establish the overissuance and is entitled to begin recoupment of same in the amount of [REDACTED]

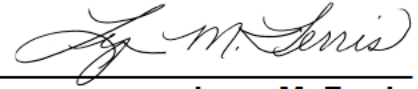
DECISION AND ORDER

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. Respondent did did not commit an IPV by clear and convincing evidence.
2. Respondent did did not 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 [REDACTED] in accordance with Department policy.



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

Date Signed: June 18, 2014

Date Mailed: June 18, 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

cc:

