

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

IN THE MATTER OF:



Reg. No.: 201432288
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: JULY 10, 2014
County: Oakland (04)

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 July 10, 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 February 7, 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 November 1, 2010 to June 30, 2011 (fraud period).
7. During the fraud period, the Department alleges Respondent was issued \$1578 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received a FAP OI in the amount of \$1578.
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 her FAP benefits because she intentionally failed to report her employment income. In support of its case, the Department presented (i) the redetermination Respondent submitted to the Department on June 1, 2010; (ii) the online application Respondent submitted to the Department on September 13, 2011; (iii) the payroll data from Respondent's employer Crowne Plaza (Employer) received in response to the Department's subpoena; and (iv) benefit summary inquiry showing that Respondent was issued benefits during the fraud period.

The Department's evidence shows that Respondent started employment with Employer on August 23, 2010 and received her first paycheck on September 8, 2010. The Department alleges that Respondent did not report this employment until her September 13, 2011 application. Under Department policy, Respondent was required to report her employment within 10 days of her first paycheck. BAM 105 (January 2010), p. 7. While Respondent did not timely notify the Department of her income, in order to establish an IPV, the Department must establish that the client "committed, and *intended to commit*, an IPV." 7 CFR 273.16(e)(6); 7 CFR 273.16(c). The Department acknowledges that it became aware of the employment income only because Respondent reported it in the September 13, 2011 application. Although Respondent did not timely report her income, there was not clear and convincing evidence presented that she intentionally withheld or misrepresented her employment income for the purpose of maintaining FAP benefits.

Thus, the Department has failed to establish that Respondent committed an IPV concerning her 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 a FAP concurrent receipt of benefits. BAM 720, p. 16.

Because the Department failed to establish by clear and convincing evidence that Respondent committed a FAP IPV, 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$1578 for November 1, 2010 to June 30, 2011 but she was not eligible for any FAP benefits during this period. Based on the 10-day reporting period, the 10-day processing period and the 12-day negative action period and in consideration of Respondent's receipt of her first paycheck on September 8, 2010, the Department properly began the OI period in November 2010. BAM 105, p. 7; BAM 720, p. 7. However, the benefit summary inquiry shows that from November 2010 through June 2011 Respondent received \$1490 in FAP benefits, not \$1578. A review of the FAP OI budgets shows that the Department improperly calculated Respondent's OI amounts based on issuances of \$200 for the months February 2011 through June 2011 when the benefit summary inquiry shows that only \$178 monthly was issued during each of those months. Therefore, the maximum OI the Department may collect and/or recoup from Respondent for the period from November 1, 2010 to June 30, 2011 is \$1490.

Each of the budgets presented was further reviewed in connection with the calculation of the over-issuance. The Department testified that the budgets showed the FAP benefits Respondent would have been eligible to receive if her employment income had been included in the calculation of her FAP eligibility for each of the months at issue. The Department's budgets do not identify what specific income was used to calculate Respondent's income for each month at issue. However, a review of Respondent's pay history with Employer obtained shows that the Department considered Respondent's actual pay for each of the months at issue in accordance with policy. BEM 505 (October 2010), pp. 6-7; BAM 720 (May 2014), p. 10. Because the exclusion of Respondent's income was due to client error, Respondent was not eligible for a 20% deduction for earned income. BAM 720, p. 10.

A review of the FAP budgets shows that, based on Respondent's employment income earned between November 2010 and June 2011, Respondent's net income made her ineligible for any of the FAP benefits issued to her during this period. See RFT 260 (October 2010), p. 16. Because the Department's evidence shows that she was issued \$1490 in FAP benefits between November 2010 and June 2011, the Department has established a FAP OI of \$1490 and is entitled to recoup and/or collect this amount from Respondent.

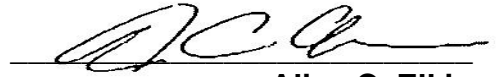
DECISION AND ORDER

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 received an OI of program benefits in the amount of \$1490 from the FAP program.

The Department is ORDERED to reduce the OI to \$1490 for the period November 2010 to June 2011, and initiate recoupment procedures in accordance with Department policy.



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

Date Signed: July 23, 2014

Date Mailed: July 23, 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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