

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

IN THE MATTER OF:



Reg. No.: 201433090
Issue No(s): 1005; 3005
Case No.: [REDACTED]
Hearing Date: June 19, 2014
County: Genesee (25-06)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 19, 2014 from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included:

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 31, 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. The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2011 through October 31, 2012.
5. During the fraud period, Respondent was issued \$8695 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] such benefits during this time period.
6. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of [REDACTED].
7. This was Respondent's first second third alleged IPV.
8. 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.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700, p. 1.

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 their reporting responsibilities.

BAM 700 (2013), 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.

The federal Food Stamp regulations read in part:

(c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program

Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2013), p. 12.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance 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 (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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, with regard to the FAP program. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Furthermore, the undersigned is convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to their FAP eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to commit an IPV.

In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has met that burden in the current case. In November, 2011, respondent applied for FAP benefits (Department Exhibit 4). On this application, respondent reported to the Department that she was not employed, which was true at the time. Had this been the only time respondent reported her income, the undersigned would decline to find an IPV, as there would be no evidence that respondent had ever misrepresented her situation. However, on January 13, 2012, respondent filed an application for CDC and MA benefits and reported that she was not employed, and had no income. (Department Exhibit 5).

This statement was false.

Per various income verifications, two of which arrived directly from her employer, respondent had been employed beginning the fourth quarter of 2011. Respondent received pay during this time period and through the period she reported she was not working. (Department Exhibits 7-10).

Respondent misrepresented her income on her FAP application, and this misrepresentation is evidence of malfeasance with regards to respondents reporting requirements.

As such, if respondent purposely failed to report her income to the Department, it must follow that respondent made this misrepresentation for the purpose of securing FAP and FIP benefits, and therefore has committed an Intentional Program Violation.

After reviewing the budgets in question, the undersigned finds no errors in the Department's calculations with regards to the FIP benefits, and holds that respondent received an overissuance of [REDACTED] in FIP benefits.

With regard to respondent's FAP benefits, the undersigned holds that respondent was not entitled to receive full FAP benefits during the period in question. However, the undersigned must lower the FAP overissuance amount argued by the Department, as the overissuance from November, 2011 through March, 2012 has not been fully proven.

These month's overissuances were calculated by using income averaged from a quarterly wage match to the [REDACTED].

If improper reporting or budgeting of income caused the overissuance, use actual income for the overissuance month for that income source. For FAP only, the Department may not convert the averaged monthly income reported on a wage match. BAM, 720, p. 10.

In the present case, the only evidence supplied by the Department in support of the overissuance amount that it seeks to recoup for those months is an IG-001 Quarterly Wage Match report that breaks down respondent's income by quarter. The Department did not supply any evidence showing the respondent's actual monthly, as opposed to quarterly, income during this part of the alleged fraud period.

A review of the FAP budgets supplied by the Department shows that the budget calculations during this period were achieved by averaging out respondent's quarterly income over the quarter. However, the actual income, or proof of the actual income, is not in the hearing record. Averaging quarterly income is not supported by policy. Policy requires that actual income be used. There is no evidence to show what respondent made exactly during a month, and there is no evidence that shows that respondent was actually ineligible for benefits or overissued benefits during a month during this period.

Averaging quarterly income is at most, a best guess by the Department as to what respondent actually made, and is in no way evidence of respondent's actual income. Without this crucial evidence that would show and confirm respondent's actual monthly income during the alleged overissuance period, the Administrative Law Judge cannot accept as fact the income amounts in the provided FAP budgets. As such the Department supplied FAP budgets in support of the alleged overissuance amount for the period of November, 2011 through March, 2012 are invalid, and cannot be used to show an overissuance amount.

As the budgets show that respondent received [REDACTED] excess FAP benefits during this period, the undersigned holds that this amount must be removed from the FAP overissuance amount.

The undersigned finds no other errors in the FAP overissuance budgets and the rest of the amount, [REDACTED] may be recouped in full.

Furthermore, evidence indicates that this is the first IPV for which the respondent has been found responsible.

Per policy found at BAM 720, the proper penalty for a first Intentional Program Violation is a one year disqualification. Therefore, the Department's request to impose a one year sanction on the claimant is granted.

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 FIP benefits and [REDACTED] in FAP benefits in accordance with Department policy.
- reduce the OI to \$ [REDACTED] for FIP and [REDACTED] for FAP for the period November 1, 2011 through October 31, 2012, and initiate recoupment procedures in accordance with Department policy.

- It is FURTHER ORDERED that Respondent be disqualified from
 - FIP FAP SDA CDC for a period of
 - 12 months. 24 months. lifetime.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 29, 2014

Date Mailed: July 29, 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.

2014-33090/RJC

RJC/tm

cc:

