

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

IN THE MATTER OF:



Reg. No.: 2014-33696
Issue No(s): 1005, 3005
Case No.: [REDACTED]
Hearing Date: June 19, 2014
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 conducted from Detroit, Michigan on Thursday, June 19, 2014. Participating on behalf of the Office of Inspector General (OIG) was Regulation Agent, [REDACTED]

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 over-issuance (OI) of Family Independence Program (FIP) and 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 FIP and 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 April 2, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. (Exhibit 1, p. 6)
2. The OIG requested that Respondent be disqualified from receiving FIP and FAP benefits for a one-year period. (Exhibit 1, p. 6)
3. Respondent was aware of the responsibility to not provide false information for the purpose of receiving public assistance benefits. (Exhibit 1, p. 15)
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period for FIP benefits is January 2007 (FIP fraud period).
6. The Department's OIG indicates that the time period it is considering the fraud period for FAP benefits is January 2007 through July 2007 (FAP fraud period).
7. During the FIP fraud period, Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 FIP benefits during this time period. (Exhibit 1, pp. 32 – 34)
8. During the FAP fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 FAP benefits during this time period. (Exhibit 1, pp. 35 – 48)
9. The Department alleges that Respondent received a total OI in FIP and FAP benefits in the amount of [REDACTED].
10. This was Respondent's first alleged IPV.
11. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; 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 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.

PAM 720 (October 2006), 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.

PAM 700 (October 2006), pp. 5, 6; PAM 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. PAM 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.

For FIP and FAP purposes, the OI period begins the first month benefit issuance exceeds the amount allowed by policy or 72 months before the discovery date, whichever is later. PAM 720, p. 6. To determine the first month of the OI period, time is allowed for client reporting [PAM 105 (January 2007), p. 7], the full standard of promptness for change reporting [PAM 220 (July 2006), p. 5], and the full negative action suspense period [PAM 220, p. 4]. PAM 720, p. 6.

In this case, the OIG seeks to establish IPV's under the FIP and FAP programs. The OIG asserts that Respondent failed to report earnings from employment that began, based on a Verification of Employment (DHS-38), on January 2, 2007. The Verification of Employment appears to have been mailed by the local office on June 11, 2007, and was returned to the local office on June 22, 2007, along with paystubs from May and June 2007. Generally, the employer does not submit paystubs but rather submits ledgers or other bookkeeping records. Paystubs belong to the recipient of the pay so it is reasonable to conclude that this information was submitted by the Respondent. In light of the foregoing, the Department failed to establish by clear and convincing evidence that Respondent failed to report his employment for the purpose of establishing, maintaining, increasing, or preventing the reduction of program benefits. Accordingly, the Department failed to establish an IPV.

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. 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 OI relates to MA. BAM 720, pp. 12, 13. 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. 13.

In this case, the Department failed to establish by clear and convincing evidence that Respondent committed an IPV. Accordingly, a disqualification is not established.

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 OIG seeks to an OI in the amount of [REDACTED] in FIP benefits and [REDACTED] in FAP benefits. The June 2007 Verification of Employment reflects that Respondent began working on January 2, 2007, with his first paycheck being January 8, 2007; however, pursuant to the OIG investigation in 2008, Respondent's employment began in December of 2006 with reported 4th quarter earnings of [REDACTED]. (Exhibit 1, pp. 23, 27) It is unclear as to when the [REDACTED] earnings were paid/received but in review of the employers "Transactions by Payroll Item" which reflect Respondent's pay; Respondent was paid on a weekly basis. The [REDACTED] amount of the pay is consistent with one-week of pay. The evidence shows, continual weekly payments therefore, it is reasonable to conclude that the December pay was from the last week of the month. This also explains the conflicting verifications from the employer that shows Claimant's employment began on January 2nd and then, in response to the subpoena, shows December 2006.

As such, pursuant to PAM 720, the earliest month the OI could be considered for FIP and FAP purposes is February 2007. The reason being is that Respondent's employment began the end of December 2006 so Respondent had 10 days to report and Department had 15 days to act for FIP purposes and 10 days for FAP purposes, which means the Notice of Case Action (NOCA) would have went out in January 2007. The earliest benefits could have been impacted by a January 2007 NOCA was February 2007.

The OIG seeks an OI of FIP benefits in the amount of [REDACTED] for January 2007. As discussed above, the first month the OI could be found would be February 2007. Respondent's FIP benefits terminated effective February 1, 2007. The OIG was unable to testify as to the reason for the February 2007 FIP closure. Regardless, because the Respondent did not receive FIP benefits in February, the earliest month an OI could be established, a FIP OI was not established.

The OIG seeks an OI of FAP benefits in the amount of [REDACTED] for the period from January 2007 through July 2007. As discussed above, the earliest the OI period could be established is February 2007. In removing the alleged FAP OIs for January of [REDACTED] the OI is reduced to [REDACTED] which is below the [REDACTED] threshold amount. There was no evidence of a previous IPV; trafficking; concurrent receipt of assistance; or a showing that Respondent was a state/government employee.

Accordingly, the Department failed to establish by clear and convincing evidence that Respondent committed an IPV and because the Request for Hearing regarding the OI was less than the [REDACTED] threshold amount, the OI is denied.

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 a FIP and FAP IPV in the amount of \$ [REDACTED]
2. The Department has not established a FIP and FAP OI over the [REDACTED] threshold requirement and therefore, is denied.

Colleen M. Mamelka

Colleen M. Mamelka

Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 14, 2014

Date Mailed: July 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.

CMM/tm

cc:

[REDACTED]