

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

IN THE MATTER OF:

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

Reg. No.: 2014-34832
Issue No(s): 3005
Case No.: ██████████
Hearing Date: September 4, 2014
County: Mason

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 September 4, 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 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 Food Assistance Program (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 April 16, 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 changes in circumstances, such as changes in 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 periods is August 1, 2011 to January 31, 2012 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$2576 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$941 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1635.
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 alleged that Respondent committed an IPV of her FAP benefits because she failed to report her husband's employment and income to the Department. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment and earning income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (December 2011), p.7.

The Department contended that Respondent's failure to timely report the employment and earned income caused an OI in FAP benefits in the amount of \$1635 from August 1, 2011 to January 31, 2012. The Department provided copies of the Verification of Employment (VOE) and testified that Respondent's husband returned to work at Gull Landing, receiving his first pay check on June 22, 2011.(Exhibit 1, pp.11-12). The Department alleged that Respondent's husband continued to be employed and earning income throughout the remainder of the alleged fraud period, however, there was no documentation presented from Gull Landing showing the continued employment and earnings.

In support of its contention that Respondent committed an IPV, the Department presented a Redetermination for the medical assistance program that Respondent submitted to the Department in February 2011, prior to her husband's employment and prior to the alleged fraud period. A review of the Redetermination shows that Respondent reported to the Department that she was employed and earning income from Shop-n-Save and that her husband was receiving unearned income from unemployment compensation benefits. (Exhibit 1, pp. 5-8). The Department also presented a Semi-Annual Contact Report for Respondent's FAP case which was submitted to the Department on March 31, 2011, also prior to her husband's employment and prior to the alleged fraud period, where she reports no changes in income. (Exhibit 1, pp. 9-10). While this may be sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, it does not establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning her income or employment for the purpose of maintaining her Michigan FAP eligibility. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit 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. 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.

In this case, the Department failed to satisfy its burden of showing that Respondent committed a 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 FAP 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.

At the hearing, the Department presented a benefit summary inquiry to establish that the State of Michigan issued \$2576 in FAP benefits to Respondent during the period between August 1, 2011 and November 30, 2011 and the month of January 2012. The Department alleged that Respondent was eligible for \$941 during these months and that she received an OI in the amount of \$1635. The Department did not allege an OI for December 2011.

Although the Department presented a verification of employment showing that Respondent's husband was employed, the completed verification of employment form only includes income information for pay dates of June 22, 2011 and June 29, 2011. The Department failed to present FAP OI budgets and instead provided FAP Overissuance worksheets, showing the OI calculation. The Department attempted to provide testimony concerning how the OI was calculated, however, the Department failed to present supporting documentary evidence regarding the unreported earned income amounts relied on. The Department provided a handwritten document that was prepared by a recoupment specialist listing the income amounts relied on each month; however, this handwritten document was insufficient to establish that the amounts listed were the actual unreported earnings for Respondent's husband. The Department testified that the actual earnings and pay stubs were available; however, they were not included in the evidence packet for review at the hearing.

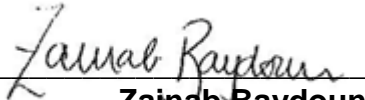
It remained unclear from the documents presented and the Department's testimony exactly how the \$1635 alleged OI was calculated in this case. Therefore, because the Department has failed to establish that Respondent was overissued FAP benefits in the amount of \$1635, the Department is not entitled to recoupment.

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 not commit an IPV by clear and convincing evidence.
2. Respondent did not receive an OI of program benefits in the amount of \$1635 from the FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: September 26, 2014

Date Mailed: September 26, 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.

ZB/cl

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