

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

**IN THE MATTER OF:**



Reg. No.: 201435151  
Issue No(s): 3005  
Case No.: [REDACTED]  
Hearing Date: June 25, 2014  
County: Macomb (12)

**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 June 25, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and testified on her own behalf.

**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 April 23, 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 September 1, 2009 to April 30, 2010 (fraud period).
7. During the fraud period, Respondent was issued \$4208 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2650 in such benefits during this time period.
8. The Department alleges that Respondent received a FAP OI in the amount of \$1558.
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.

Respondent began employment at [REDACTED] (Employer) on June 30, 2009 and received her first paycheck on July 10, 2009. Under Department policy, Respondent was required to report her employment within 10 days of her first paycheck, or by July 20, 2009 in this case. BAM 105 (July 2009), p. 7. The Department contends that Respondent failed to report her income to the Department at any time. In support of its case, the Department presented a change report Respondent submitted to the Department on July 27, 2009 in which she reports her change of address but not her employment. The Department testified that further review of the file showed no documentation that Respondent reported her income.

Respondent was at the hearing and testified that she reported her employment to her worker by phone shortly after she began employment. Department policy provides that a change may be reported in person, by mail or by telephone. BAM 105, p. 8. Because Respondent was not required to report her change in writing, the fact that she submitted a change report on July 27, 2009 concerning only her address does not lead to the conclusion that she did not independently notify the Department by phone of her employment. Although the Department argued that Respondent should have been aware that her FAP benefit amount would decrease based on receipt of income, Respondent pointed out that she was not aware how her income affected her benefit amount. Based on the evidence presented, the Department has failed to establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information concerning her income for the purpose of maintaining or increasing FAP eligibility.

Thus, the Department has failed to satisfy its burden of showing that Respondent committed an IPV of 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 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$4208 for September 1, 2009 to April 30, 2010 but she was only eligible for \$2650 in 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 July 10, 2009, the Department properly began the OI period in September 2009. BAM 105, p. 7; BAM 720, p. 7. At the hearing, Respondent testified that she did not actually begin employment until August 2009, but did not present any evidence to support her position despite being given the opportunity to do so. The Department presented a claim summary showing that Respondent received \$4208 in monthly FAP benefits from September 1, 2009 to April 30, 2010.

To establish the OI amount, the Department presented FAP OI budgets for each month between September 2009 and April 2010 showing the amount of benefits Respondent was eligible to receive if her earned income had been included in each month's budget. A review of the budgets shows that the Department properly calculated Respondent's actual income for each month at issue. BAM 720, p. 10. Respondent's testimony disputing the date her employment began leads to the conclusion that she did not timely notify the Department of her income. Accordingly, she is not eligible for the earned income deduction. BAM 720, p. 10. A review of the budgets establishes that Respondent was eligible for only \$2650 of the \$4208 she received.


Therefore, the Department has established a FAP OI of \$1558 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 \$1558 from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1558 in accordance with Department policy.

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

Date Signed: July 11, 2014

Date Mailed: July 11, 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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