

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

IN THE MATTER OF:

██████████
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Reg. No.: 2014 7735
Issue No(s): 3005
Case No.: ██████████
Hearing Date: February 19, 2014
County: Macomb DHS 36

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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

Participants on behalf of Respondent included: the Respondent and a witness Steven Wheeler.

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 October 23, 2013, 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. Respondent was was not aware of the responsibility to report all FAP group income.
5. Respondent had no 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 June 1, 2010 through August 31, 2010 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$ [REDACTED]
9. This was Respondent's first second third alleged IPV.
10. At the hearing it was determined that the Hearing Packet was not sent to the Respondent prior to the hearing and that the Respondent attempted to get a packet from the Department and MAHS prior to the hearing but was not provided a hearing packet.
11. 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 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.

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 (7/1/13), p. 10.

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 Department alleges that Responded was overissued FAP benefits in the amount of \$ [REDACTED] covering the period from June 1, 2010 through August 31, 2010. A verification of employment provided as part of the evidence and read into the record demonstrated an hourly rate of pay of [REDACTED] which was confirmed by the Respondent's witness who was the wage earned and indicated that the hours worked were 40 hours. This computes to [REDACTED] per month. (40 X \$10.50 = \$420 X 4 + \$ [REDACTED]). The evidence available to the Department also provided the actual biweekly earnings but the documentary evidence was not admitted as the Claimant did not receive the hearing

packet even after making inquiry with the DHS and MAHS for a copy. The Department was asked the gross income limit it used to determine the overissuance and advised during the hearing it was [REDACTED]. This limit is incorrect as it is the MA income limit, not the FAP income limit. Checking Department policy for the period in question it is determined the gross income limit for FAP for a group of 3 was [REDACTED] and therefore the Department did not demonstrate that the Claimant's gross income exceeded the gross income limit. RFT 250 pp. 1 (1/1/10)

In addition the Department did not provide (testify to) any FAP overissuance budgets for the period in question and did not testify to any income received by the Respondent except for the month of June 2011 which income amount conflicted with the testimony of the Respondent's witness (wage earner) and the employer's actual verification. Based upon the evidence presented and lack of monthly FAP overissuance budgets for the period of overissuance, the Department did not establish an overissuance, did not meet its burden of proof and is not entitled to a recoupment.

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 (7/1/10), 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.

In this case, the Department alleged an overissuance of FAP benefits occurred due to the failure of Respondent to report her spouse's earnings.

As discussed above, because the Department has failed to establish that Respondent was overissued FAP benefits in the amount of \$ [REDACTED] and because an OI is a condition of suspected IPV, the Department has failed to satisfy its burden of in establishing that an IPV of FAP was committed by Respondent by failing to report the earned income of a group member. It does appear that the earnings were not reported in a timely manner, however, they were eventually reported with the redetermination. The Department, however, did not establish an overissuance amount and therefore cannot sustain its burden of proof 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. 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 (7/1/13), 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, because the Department did not establish its entitlement to a disqualification as no intentional program violation occurred.

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 established by clear and convincing evidence that Respondent did did not commit an intentional program violation (IPV).
2. Respondent did not receive an OI of program benefits in the amount of \$1398 from the following program(s) FIP FAP SDA CDC MA.

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



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 4, 2014

Date Mailed: April 7, 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.

LMF/tm

cc| [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]