

**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 7751
Issue No(s): 3005, 2006
Case No.: ██████████
Hearing Date: February 19, 2014
County: Macomb County 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 ██████████
██████████ her spouse.

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Adult Medical Program (AMP) Food Assistance Program (FAP)
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Adult Medical Program (AMP)?
 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 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 AMP FAP benefits issued by the Department.
4. Respondent was was not aware of the responsibility to to report starting of employment and earned income receipt.
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 September 1, 2011 through November 30, 2011 for both AMP and FAP (fraud period).
7. During the fraud period, Respondent was issued ████████ AMP and ████████ FAP in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in AMP and \$0 in FAP in such benefits during this time period.
8. The Department alleges that Respondent received an OI in benefits in the amount of ████████ AMP and ████████ FAP. .
9. This was Respondent's first second third alleged IPV.
10. 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 Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10. 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).

☒ 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.

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 (7/1/13), 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 alleges that the Claimant received an overissuance of both AMP and FAP benefits and committed an IPV because he failed to report employment and earnings in a timely manner. The Department alleges that Respondent received an overissuance of ██████████ AMP and ████████ FAP, for a total overissuance of benefits of ██████████ for the period beginning September 1, 2011 through November 30, 2011.

The evidence revealed that a redetermination was completed by the Respondent on October 7, 2011 at which time he reported the income from employment. The Records show that employment began in July 2011 and was reported thereafter in October. Under these facts, it was not established that the Claimant intentionally failed to report the income and did so when first asked thus the Department has not established that the claimant intentionally failed or withheld information to obtain more benefits that he was entitled to receive.

After a thorough review of the written evidence and the testimony of the Respondents it is determined that the proofs presented did not establish and IPV for receipt of AMP and FAP benefits. This finding is based upon the fact that none of the written documents failed to disclose information and were true at the time they were completed therefore it is determined that an IPV was not established by clear and convincing evidence. It should also be noted that the combined overissuance as determined by this Decision below (Overissuance) is only ██████████ and does not meet the ██████████ threshold limit. BAM 720.

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, as the Department did not establish and IPV its request for disqualification from receipt of AMP and FAP benefits must be denied.

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 Respondent received an overissuance of █████ AMP and █████ FAP for a total overissuance of benefits of \$1█████ for the period beginning September 1, 2011 through November 30, 2011. A thorough review of the evidence demonstrates that the AMP overissuance based upon premiums paid by the Department totaled \$█████, however the Department seeks █████. Claimant's gross income did exceed the AMP income limit of █████ per month for one individual, and even though no AMP budgets were provided, the weekly income of any one week during the months of September, October and November exceeded █████, and thus the Department established an overissuance of AMP

The Department did not establish an overissuance of FAP benefits as no budgets were provided to establish that the Respondent's earned income exceeded the gross income limit nor did the Department provide the gross income limit established by Department policy for the period in question. It is not the responsibility of the undersigned to determine the gross income, or perform calculations on behalf of the department or to infer from the raw data, ie. bi weekly gross income what the total gross income was and whether it exceeded the FAP gross income limit. As none of these calculations were made and presented by the Department, it is determined that the Department is not entitled to an overissuance finding for FAP benefits as the Department did not meet its burden of proof.

The Department is entitled to recoup only the \$█████ in AMP overissuance.

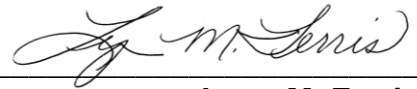
DECISION AND ORDER

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 did not receive an OI of program benefits in the amount of \$█████ from the following program(s) FIP FAP SDA CDC AMP.
3. Respondent did did not receive an OI of program benefits in the amount of █████ from the following program(s) FIP FAP SDA CDC AMP.

The Department is ORDERED to

- initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.



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

Date Signed: April 7, 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]
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