

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

IN THE MATTER OF:

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████████████████████
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Reg. No.: 2014-7762
Issue No(s): 3006
Case No.: ██████████
Hearing Date: February 12, 2014
County: Macomb (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 12, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent, ██████████, and interpreter, ██████████

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Food Assistance Program (FAP)
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
 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 FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in circumstances, such as income changes to the Department.
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 May 26, 2010 through April 30, 2011 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$7541 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 \$7541.
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 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 (July 2013), 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 (July 2013), 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 Respondent committed an IPV of her FAP benefits because she failed to report earned income from self-employment. The Department testified that Respondent signed an application acknowledging her responsibility to report changes, such as changes in income. The Department testified that in March 2010, Respondent indicated that she received income of \$350 per month. Subsequently the Respondent also applied for general assistance in May of 2012 the Respondent reported receipt of income as a hair stylist and receiving \$300 per week. Exhibit 1 pp 22. At the time of the application the Department noted that the Respondent had difficulty with English. Exhibit 1, pp 27. The Respondent also filed a Semi-Annual Contact Report indicating receipt of unemployment of \$600 per month. A redetermination was filed in February 2011 and at that time the Respondent reported that she received \$150 weekly.

The Department stated that this failure to report income from self-employment/employment caused an OI of FAP benefits in the amount of \$7541 from May 26, 2010 through April 30, 2011. Based upon these applications and reportings including the semi-annual contact report and redetermination, it is determined that the Respondent did not commit an intentional program violation. She consistently reported earnings. The proofs did not contain any requests for verification of income by the Department; thus, apparently based upon the information provided with the application, the Department calculated the Food Assistance. The proofs do not contain any indication that the Respondent failed to report income or under reported the income. The under reporting was not demonstrated as no FAP budgets were presented as part of the proofs. This hearing was made further more difficult as the Department did not provide the hearing packet to the Respondent prior to the hearing.

Therefore, there was insufficient evidence of intent to commit fraud or misrepresent information. Therefore, the Department has not established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits by failing to report earned income from self-employment. The record did not establish self-employment, in fact the Respondent provided W2 for 2010 to the Department indicating that she received \$13,550 in gross income for the year.

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 has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under 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 6; BAM 715 (December 2011), pp 1, 5; BAM 705 (December 2011), p 5.

In this case, the Department alleged that Respondent was overissued FAP benefits in the amount of \$7541. The Department testified that in calculating the OI, it relied on information obtained from the 2010 tax return and 2011 tax return filed for the salon. The returns show that the salon lost money and the calculation used to determine how the income from self-employment was determined was not in accordance with Department policy contained in BEM 502. The Department stated that it used the \$35,783 in gross income for the business to determine what Respondent's income would be each month and therefore, concluded that Respondent would not be eligible for any FAP benefits, as her monthly income exceeded the limit.

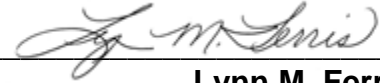
At the hearing, Respondent testified that she completed an individual tax return for the year 2010 and that her total wages for the year were only \$13,550. Exhibit 1 pp 58. The Department failed to present any supporting evidence concerning the calculation of the OI amount and did not provide evidence detailing by FAP budgets detailing the amount of FAP benefits issued to Respondent each month for the fraud period. The Department provided no before or after budgets and therefore did not meet its burden of proof. As such, the Department has failed to establish that Respondent was overissued FAP benefits in the amount of \$7541.

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 did not commit an IPV by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$7541 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: March 27, 2014

Date Mailed: March 27, 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.

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