

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

IN THE MATTER OF:



Reg. No.: 2014-820
Issue No(s): 3055
Case No.:
Hearing Date: February 5, 2014
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 5, 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.

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 September 30, 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 unearned 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 February 1, 2011 to June 30, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$2,630 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,425 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 \$1,205.
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. 12.

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. 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 of her FAP benefits because she failed to report her child support income received for her two children (unearned income), which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Unearned income:
 - Starting or stopping a source of unearned income.
 - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 7.

The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2011 to June 30, 2011. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report the unearned income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, the Department presented Respondent's Redetermination dated May 3, 2011, which was during the alleged fraud period. See Exhibit 1. A review of the Redetermination indicated that she did not report any child support income. See Exhibit 1.

Second, the Department presented the child support issuance amounts during the alleged fraud period (dated July 5, 2011). See Exhibit 1. This document included a Financial Detail Report for the child support. See Exhibit 1. This document showed that the monthly charges, balanced owed, and payoff amount. See Exhibit 1. Respondent also provided as evidence a form which indicated that amount of child support as of January 26, 2011. See Exhibit A. This form indicated that \$1,725 was the per month current child support, \$40 per month current cash medical support, \$33.50 per month for arrears and/or fees, which resulted in a total of \$1,798.50. See Exhibit A. The

Financial Detail Report did reflect this information other than the \$33.50 in fees. See Exhibit 1.

Third, the Department presented an application dated July 1, 2011, which the Respondent listed child support income in the amount of \$500 per child. See Exhibit 1. The Department's OIG report indicated that this was the first time it was aware of the child support income. See Exhibit 1.

At the hearing, Respondent argued that she did not intentionally withhold or misrepresent her income information. Respondent testified that she actually reported to the Department her child support income. Respondent testified that on or around January 2011, the child support was \$540 per each child (\$1,080 total). Respondent testified that she first reported the child support income to her DHS caseworker right after she received her court order on January 26, 2011. It should be noted that a review of the court order indicates the total child support income amount is \$1,725. See Exhibit A. This is contradictory than what the Respondent testified about.

Additionally, Respondent also testified that when the child support income began, she was receiving \$700 per child. Again, Respondent presented contradictory testimony as to the amount of child support she was receiving. Nevertheless, Respondent testified that she did not receive any of the child support for the first three to four months because the State of Michigan was collecting those funds. Respondent testified that at the same time the child support income was occurring, she also received cash assistance. Due to this, Respondent testified that she was not eligible for both incomes and the State of Michigan would obtain her child support. Respondent testified she would only receive a rebate each month from the state. Ultimately, Respondent testified that she did not receive any child support from February 2011 to April 2011, and then, on or around May 2011, is when she first received the income.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. The evidence was not persuasive to show that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

Furthermore, Respondent presented credible testimony and evidence that she did not intentionally withhold or misrepresent the unearned income. The Department did present evidence to contradict Respondent's assertion that she reported the unearned income. The Department presented Respondent's Redetermination dated May 3, 2011, which was during the alleged fraud period. See Exhibit 1. A review of the Redetermination indicated that she did not report any child support income. See Exhibit 1. However, Respondent presented credible evidence that she did report her child support income after the court order dated January 26, 2011. See Exhibit A. Respondent presented this document to show that she did in fact report to the Department child support income. See Exhibit 1. Also, even though it is subsequent to the alleged fraud period, Respondent ultimately reported her child support income in the

application dated July 1, 2011. See Exhibit 1. Based on the above information and evidence, this shows that Respondent did not intentionally withhold or misrepresent the income information.

In summary, Respondent presented credible testimony and evidence that she did not intentionally withhold or misrepresent the income information. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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. 16. 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. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2013), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of her unearned income information timely. First, Respondent did present evidence of the January 26, 2011, which she stated she reported to the Department at the time to show the unearned income. However, the Department also presented credible evidence that she gave incorrect or incomplete information to the Department. For example, the Department presented Respondent's Redetermination dated May 3, 2011, which was during the alleged fraud period. See Exhibit 1. A review of the

Redetermination indicated that she did not report any child support income. See Exhibit 1. Second, the evidence shows that Respondent did eventually report the income in the application dated July 1, 2011. However, this occurred more than five months into her child support income. Third, Respondent presented contradictory testimony as to how much she actually received in child support income. This contradictory testimony indicated that it was possible for the Respondent to give incorrect or incomplete information as she was unaware of the child support amount. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105, p. 7. It is the Respondent's responsibility to report the changes and not the DHS caseworker. BAM 105, p. 7.

Based on the information above, the Department presented persuasive evidence that an OI is present due to client error. The evidence shows that the Respondent failed to report the changes to the Department timely, which caused an overissuance of FAP benefits.

Regarding client error overissuances, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date the OI was referred to the RS, whichever is later. BAM 715, p. 4. To determine the first month of the OI period (for OIs 11/97 or later) the department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 715, p. 4. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, p. 4.

Applying the above standard and in consideration of the child support order dated January 26, 2011, the Department determined that the OI period began on February 1, 2011. See Exhibit 1. It is found that the Department applied the inappropriate OI begin date.

Nevertheless, the Department only presented an OI budget for August 2011, which is after the alleged fraud period. See Exhibit 1. However, a handwritten summary of the overissuance indicates that the August 2011 budget is reflective of the benefit months of February 2011 thru June 2011. See Exhibit 1. The budget indicated that the countable unearned income was \$1,724. See Exhibit 1. A review of the child support issuance amounts found it difficult to determine if the Department properly calculated the unearned income amount. The Financial Detail Report and Respondent's own exhibit did show how the child support income is \$1,725, however, the Financial Detail Report also indicated balances owed. See Exhibits 1 and A. Thus, it is unclear if Respondent actually received the total child support amount. Moreover, it was difficult to review the financial detail report screen to determine what amounts were received during the alleged fraud period.

Additionally, the Department testified that it was unsure how the budget was calculated. The Department failed to present a child support income document, which would show how much income was received each month. Finally, Respondent even testified that

she did not receive any child support income until approximately May 2011. Thus, it comes into question whether she received any child support income for February 2011 to April 2011 (during the alleged fraud period).

The local office and client or authorized hearing representative will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (July 2013), p. 33. Both the local office and the client or authorized hearing representative must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, pp. 33-34. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 35.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to present evidence on how it calculated the OI amount. BAM 600, pp. 33-35. There is evidence to show an OI is present, however, the Department also needs to establish how it calculated the OI amount. Because the Department failed to present evidence on how it calculated the OI amount, the Department did not satisfy its burden of showing that it acted in accordance with Department policy. Therefore, there is no OI present as the Department failed establish the OI amount. BAM 600, pp. 33-35.


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 \$1,205 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

2014-820/EJF

Date Signed: March 4, 2014

Date Mailed: March 4, 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.

EJF/tlf

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