

**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.: 14-008959
Issue No.: 3005, 6005
Case No.: ██████████
Hearing Date: December 18, 2014
County: CALHOUN (DISTRICT 21)

ADMINISTRATIVE LAW JUDGE: Lynn 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 December 18, 2014, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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 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 August 19, 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 changes in 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 December 1, 2010 through November 30, 2012 (FAP) [REDACTED] (fraud period) and October 10, 2010 through January 28, 2012 (CDC) [REDACTED]
7. During the fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
8. During the fraud period, the Respondent was issued to [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
10. The Department alleges that Respondent received an OI in CDC benefits in the amount of [REDACTED]
11. This was Respondent's first alleged IPV.
12. 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 Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 (8/1/12), 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 (12/1/11), 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 seeks to establish that the Respondent failed to report correctly when she exceeded the simplified reporting limit, as well as changes in income that made her allegedly ineligible to receive Food Assistance (FAP) and Child Development and Care (CDC) benefits.

The Department presented proofs regarding the Respondent's income from [REDACTED], her then employer. A review of the FAP eligibility summary indicates that in large part the exceedance of income was due to bonuses received and fluctuating income. The Department did not present any of the Notices of Case Action advising the Respondent of her obligation to report when her income exceeded the simplified reporting limit. While the evidence presented definitely indicates that the Respondent's income exceeded the income limit to be eligible for FAP, the Issuance summary notes periods of several months where Respondent's income did not exceed the limit. Exhibit 1 pp. 139. For example, the Respondent was over the income limits in September 2011, and then not over the limit until February 2012, then eligible, then again over the limit in August and September 2012. Based upon these factual circumstances, the Department has not established that the Respondent failed to report income intentionally. Also noteworthy, the Respondent did report receipt of her bonuses and an insurance expense on two of the many redeterminations presented. Given these income changes, the Department should have received check stubs to verify the change. No verifications or check stubs were presented.

The Respondent completed a redetermination on November 3, 2010 which did not inquire as to her employment or simplified reporting. The redetermination was completed and a telephone interview was conducted. The Department did not indicate whether or what the proofs were that the Respondent was required to provide, including paychecks. The caseworker notes indicate that the Respondent reported an insurance expense of five dollars per month that went into effect in October 2010, thus it can reasonably be assumed that the Respondent's earnings were discussed. Exhibit 1, p. 59. Another redetermination was completed on March 15, 2011, and the Respondent reported 80 hours of work bi-weekly, and the proofs required of Respondent or provided by the Respondent were not identified by the Department. Thus, it cannot be determined whether the Department actually received pay stubs from the Respondent. Exhibit 1p. 64.

A Semi Annual Contact Report was completed on May 23, 2011 by the Respondent. The Respondent answered "no" to the following questions: "Has your household's gross earned income including earnings from self-employment change by more than \$100 from the amount above? Has anyone had a change in earnings because they change started or stopped a job?" The household income section clearly stated that the households gross earned income (before taxes), which was to be referenced in answering the question was \$1892.

Another Semi Annual Contact Report was completed by the Respondent on April 11, 2012. The same two questions were asked of the Respondent based on a household gross earned income before taxes of [REDACTED]. The Respondent answered "no" to both of those questions.

Lastly, the Respondent completed an application on June 26, 2012 wherein she noted that she had received a raise to [REDACTED] annually, that income varied due to bonuses, and that she had received child support, (first time in 4 years). Exhibit 1 pp. 85. There are numerous handwritten notes that appear to be the caseworker's writing which would clearly indicate the Department was on notice as to the Respondent's income.

Overall, after a review of the entire record in the numerous applications and redeterminations which were presented, it is determined that the Department has not established by clear and convincing evidence that the Respondent intentionally failed to report her income exceeding the limits or withheld information with the intention of committing an intentional program violation which would have caused her to receive benefits she was otherwise not entitled to receive.

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. 12.

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 (10/1/09), 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. 13.

In this case, as the Department has not established that an intentional program violation was committed by the Respondent, the Department is not entitled to a finding of disqualification.

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 evidence of actual income received by the Respondent during the fraud period and the budgets for each month of the FAP and CDC benefits at issue were reviewed and were determined to be correct as presented. The Department clearly established through food assistance budgets, Exhibit 1 pp. 139-153 and CDC benefit issuance summary, Exhibit 1 pp. 124-129 and CDC budgets pp. 154 - 195 issued to the Respondent during the fraud period, that the Respondent did receive an over issuance of food assistance in the amount of \$2622.00 and CDC benefits in the amount of \$6079.27. The Department clearly provided information as regards to earned income and other household income that was underreported and clearly established that the Respondent received more FAP and CDC benefits than entitled and, thus, the Department is entitled to recoup the overissuances.

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 did receive an OI of program benefits in the amount of [REDACTED] from the Food Assistance Program and [REDACTED] from the CDC program.

