

**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.: 14-005472
Issue No.: 3005
Case No.: ██████████
Hearing Date: February 18, 2015
County: KALAMAZOO

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 three-way telephone hearing was held on February 18, 2015, 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 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 June 30, 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 child support payments (unearned 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 September 1, 2011 to February 28, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$3,120 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2,119 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,001.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.
11. On September 9, 2014, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Disqualification Hearing, scheduling the hearing for October 13, 2014.
12. On October 13, 2014, Respondent failed to attend the scheduled hearing; however, MAHS subsequently discovered a request from the Respondent for an adjournment.
13. On October 16, 2014, the Administrative Law Judge (ALJ) Manager sent both parties an Order Granting Adjournment.
14. On January 15, 2015, MAHS sent both parties a Notice of Disqualification Hearing, rescheduling the hearing for February 18, 2015.
15. On February 12, 2015, Respondent submitted a request for a telephone hearing and this ALJ granted such a request.
16. On February 18, 2015, all parties were present and the hearing proceeded accordingly.

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 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 (May 2014), pp. 12-13.

As a preliminary matter, Respondent indicated that she never received the evidence packet. However, the Department presented evidence that it mailed the packet to the Respondent's proper address on June 30, 2014. See Exhibit 1, p. 3. Nevertheless, Respondent testified that the entire hearing packet could be admitted into evidence.

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 (May 2014), 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 unearned income to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (June 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 September 1, 2011 to February 28, 2012. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her 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 application dated February 17, 2009, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 11-26.

Second, the Department presented Respondent's redetermination received on February 8, 2012, which was submitted during the alleged fraud period. See Exhibit 1, pp. 27-30. In the redetermination, Respondent only reported her Supplemental Security Income (SSI) income. See Exhibit 1, p. 28. However, the Department alleged that Respondent failed to report child support payments received. The Department presented verification of Respondent's child support payments. See Exhibit 1, pp. 39-46.

At the hearing, Respondent argued that she did not commit an IPV. Respondent testified that she was unaware that she received child support income for Child A (name intentionally removed) from the absent parent. Respondent testified that the child support income would be deposited into a card/link in her name (possibly a debit card). Respondent testified that she did not know that the absent parent obtained her card and used the funds in which the child support money was deposited into.

Additionally, Respondent testified that she eventually discovered the child support income approximately one year ago from the Department. Respondent testified that she reported this incident and cancelled her card; however, Respondent could not provide any proof of the cancellation nor proof that she reported this incident (i.e., a police report or court system involvement). It should be noted that Respondent argued that the Department knew of Child B's (a different absent parent) child support payments. See Exhibit 1, pp. 43-46. Respondent testified that she always reported Child B's child support income to the Department. Finally, Respondent testified that she did not know she received child support income because the absent parent was unemployed. Respondent also testified that this issue is currently being dealt with the court system.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits.

First, Respondent alleges that she was unaware of the child support payments because the absent parent obtained her card and used the funds in which the child support money was deposited. However, this ALJ does find the Respondent credible. Respondent indicated that she reported and cancelled her card upon discovery of the fraud committed; however, she failed to present any evidence of this cancellation or

incident being reported. Moreover, the Department presented evidence that Child A's child support income was considered "child support direct (court-ordered)." See Exhibit 1, pp. 43-46.

Child Support is money paid by an absent parent(s) for the living expenses of a child(ren). BEM 503 (July 2011), p. 5. Medical, dental, child care and educational expenses may also be included. BEM 503, p. 5. Court-ordered child support may be either certified or direct. BEM 503, p. 5. Direct support is paid to the client. BEM 503, p. 5. Child support is income to the child for whom the support is paid. BEM 503, p. 5. Court-ordered direct support means child support payments an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU). BEM 503, p. 7. The Department counts the total amount as unearned income, except any portion that is court-ordered or legally obligated directly to a creditor or service provider. BEM 503, p. 7.

Based on the above policy information, this ALJ finds the Respondent not credible that she did not know that she would receive court-ordered child support payments. Child A received court-ordered child support payments; therefore, it would be reasonable to conclude that Respondent was well aware that she would receive court-ordered payments. Furthermore, the evidence indicated that the funds were deposited into a "debit card". See Exhibit 1, pp. 39-42. Therefore, Respondent should have been aware of any funds being deposited into her account, i.e., child support income. As such, this ALJ finds the Respondent not credible that she alleges that she was unaware of any child support income being received.

Second, the Department presented Respondent's redetermination received on February 8, 2012. See Exhibit 1, pp. 27-30. The redetermination indicated only SSI income, but no child support income. See Exhibit 1, p. 28. However, the Department presented child support payments, which showed Respondent receiving such income at the time she submitted the redetermination. See Exhibit 1, pp. 39-46. Thus, the evidence presented that Respondent was aware that she received child support income at the time of redetermination and that she failed to report such unearned income. This is clear and convincing evidence that Respondent committed an IPV of her FAP benefits because she intentionally withheld or misrepresented the unearned income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a one-year disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of her FAP benefits.

Applying the OI standard and considering that Respondent began receiving the unreported income in July 2011, the Department determined that the OI period began on September 1, 2011. See Exhibit 1, pp. 4, 40, and 45-46. It is found that the Department applied the appropriate OI begin date. See BAM 720, p. 7.

Additionally, 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 group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In regard to Respondent's FAP benefits, the Department presented OI budgets for the time period of September 2011 to February 2012. See Exhibit 1, pp. 59-60. Monthly budgets were provided for the FAP programs using the verification of child support payments. See Exhibit 1, pp. 39-46. A review of the OI budgets found them to be fair and correct, except for September 2011 and October 2011.

For September 2011, the budget indicated that the correct benefit issuance Respondent should have received was \$405. See Exhibit 1, p. 49. However, the Department's OI summary indicated the correct benefit amount was \$401. See Exhibit 1, p. 48. The Department transposed the improper amount because it should have been \$405. See Exhibit 1, p. 49. As such, the OI amount for September 2011 should be \$121 (\$526 actual amount issued minus \$405 correct benefit amount). See Exhibit 1, pp. 48-49.

For October 2011, Respondent's benefit summary inquiry indicated that she received \$524; however, the OI summary indicated she received \$526. See Exhibit 1, pp. 47-48. Again, the Department transposed the improper amount because the actual amount received should have been \$524. See Exhibit 1, pp. 47-48. Therefore, the OI amount for October 2011 should be \$116 (\$524 actual amount issued minus \$408 correct benefit amount). See Exhibit 1, pp. 47-48. The Department miscalculated an excess of

\$6 for the OI budget; therefore, the total OI amount is reduced to \$995 (\$1,001 original OI calculation minus \$6).

Based on the above information, the Department established that the overissuance for FAP benefits was \$995 for the time period of September 2011 to February 2012.


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 committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$995 from the following program(s) FAP.

The Department is ORDERED to reduce the OI to \$995 for the period September 1, 2011, to February 28, 2012, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/25/2015**

Date Mailed: **2/25/2015**

EJF / cl

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

