

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

IN THE MATTER OF:



Reg. No.: 2014-30740
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: February 10, 2015
County: Emmet

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing on January 17, 2014, 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.

A disqualification hearing was scheduled for April 21, 2014 and this hearing was adjourned so that the Respondent could attend an in-person hearing. A disqualification hearing was scheduled for December 3, 2014, and this hearing was adjourned because the Respondent had moved to another county and requested to appear by telephone.

A disqualification hearing was scheduled for December 9, 2014. Respondent did not appear at the December 9, 2014, 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). The Decision and Order dated December 15, 2014, was vacated on January 5, 2015, because the Respondent had not received notice of the December 9, 2014, hearing.

After due notice, a telephone hearing was held on February 10, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included Malynda Agnew.

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 January 17, 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 acknowledged her responsibility to report all household income and changes to her benefit group size and composition when she signed applications for assistance on July 21, 2010; August 27, 2010; September 22, 2010; January 11, 2011; April 1, 2011; April 19, 2011; August 18, 2011; and October 13, 2011.
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, 2010, through June 30, 2012.
7. The Respondent was Food Assistance Program (FAP) recipient from September 1, 2010, through July 1, 2012.
8. [REDACTED] (husband) is the Respondent's husband and he was a Food Assistance Program (FAP) recipient from July 1, 2010, through July 31, 2011.
9. The husband received Supplemental Security Income (SSI) benefits from January 1, 2010, through December 1, 2012.
10. The husband was employed at [REDACTED], from April 14, 2011, through July 24, 2012.
11. The Respondent married [REDACTED] in Midland County, Michigan, on May 6th, 2010.
12. On July 21, 2010, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband.
13. On August 27, 2010, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband.

14. On September 22, 2010, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband.
15. On January 11, 2011, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband.
16. On April 1, 2011, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband.
17. On April 19, 2011, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband.
18. On August 18, 2011, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband. There is a note on the application that "Dad in prison."
19. On October 13, 2011, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband.
20. On January 6, 2012, the Respondent signed a Semi-Annual Contact (DHS-1046) listing herself and one child in her household.
21. The Respondent entered into a lease agreement commencing February 1, 2012, with herself and her husband as co-tenants and two sons listed on the lease as additional residents.
22. On March 13, 2012, the Respondent signed an application for Food Assistance Program (FAP) benefits claiming to be married but not living with her husband. The following notes appear on this application: [REDACTED] moved back in on 2-17-12" "She stated [REDACTED] lives in Sag w/ Dad" "Rcd 3/14/12 P/C 3/15 @ 8:15a husband doesn't live w/her".
23. On April 6, 2012, an agent of the Office of Inspector General made an unannounced home call to the Respondent's home and was told by the Respondent's husband that he resides with the Respondent.
24. On May 31, 2012, an agent of the Office of Inspector General interviewed the husband's father and was told that the Respondent's husband stays with his father once or twice every couple weeks.
25. 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.
26. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]

27. This was Respondent's first alleged IPV.
28. 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 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 1, 2014), p. 12-13.

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 1, 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 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.

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 Respondent was an ongoing Food Assistance Program (FAP) recipient from September 1, 2010, through June 30, 2012. Respondent acknowledged her responsibility to report all household income and changes to her benefit group size and composition when she signed applications for assistance on July 21, 2010;

August 27, 2010; September 22, 2010; January 11, 2011; April 1, 2011; April 19, 2011; August 18, 2011; and October 13, 2011.

On each of these applications for Food Assistance Program (FAP) benefits, the Respondent reported to the Department that she was married but did not list her husband as a member of her household on any of them. The Respondent and her husband were married on May 6, 2010, in Midland County, Michigan.

Spouses who are legally married and live together must be in the same group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2014), p 1.

The Respondent's husband received Supplemental Security Income (SSI) benefits from January 1, 2010, through December 31, 2011. The Respondent's husband was employed and received earned income from April 14, 2011, through July 24, 2012. The Respondent's husband received Food Assistance Program (FAP) benefits on another case from July 1, 2010, through July 31, 2011.

No earned or unearned income received by the Respondent's husband was reported to the Department by the Respondent, and the Department did not consider this income when determining the Respondent's Food Assistance Program (FAP) benefit amount.

The Department alleges that the Respondent intentionally failed to report her husband's presence in her home for the purposes of receiving and maintaining Food Assistance Program (FAP) benefits that she would not have been eligible to receive otherwise.

The Department alleges that the Respondent's marriage was not verified until 2012. The Department presented an investigation report from its routine business records dated April 6, 2012, that includes an investigator's findings that the Respondent's husband stated that he had resided in the Respondent's home for two months. The Department presented an investigation report from its routine business records dated May 31, 2012, that includes an investigator's findings that the husband's father stated that the Respondent's husband stays with his father once or twice every couple weeks. The husband's father also told the investigator that the husband primarily stays with the Respondent but that he also spends time at other locations. The Department presented evidence that the Respondent's husband used the Respondent's address as his mailing address of record with his employer. The Department presented evidence from a LexisNexis database search that indicates the Respondent were both members of the same household from August of 2010, through December of 2010. The Respondent and her husband signed a lease as co-tenants on February 1, 2012.

The Respondent argued that her husband did not live with her in her home during the period of alleged fraud despite the fact that they have been married since May 6, 2010. The Respondent claims her husband's son has a step-son and they have a child in common as of June 6, 2014. The Respondent's step-son has the same first and last names as his father.

This Administrative Law Judge finds that it is not relevant that the Respondent's marriage was not verified until 2012, since the Respondent has consistently reported to the Department that she has been married to her husband since submitting an application for benefits on July 21, 2010.

Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212, p 3.

The Office of Inspector General reports suggest that the Respondent's husband has been in her home at some time during the period of alleged fraud, but that he also spent time at his father's home. The Respondent testified that there have been incidents of domestic violence between herself and her husband. The Respondent testified that her husband has stayed at other locations and that infidelity has been a barrier to them living together.

This Administrative Law Judge finds that the evidence does not support a finding that the Respondent has attempted to conceal her marriage from the Department, or that her husband, a Food Assistance Program (FAP) recipient from July 1, 2010, through July 31, 2011, is the father of her step-son. The evidence supports a finding that the Department accepted the Respondent's explanation that she does not live with her husband through March 13, 2012.

A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less. BEM 212, p 3.

This Administrative Law Judge finds although the Respondent's husband may have used the Respondent's address as a mailing address for some purpose but that this is not conclusive evidence that the two lived together. This Administrative Law Judge finds that BEM 212 does not specify much time a husband and wife must stay together to be considered living together. The policy defines temporarily absent as an absence 30 days or less where there is a definite plan for return, but does not define where that person is living when they stay at multiple locations during that 30 day period. The Department's evidence is not inconsistent with the Respondent's claim that her husband stayed at locations other than her home that he did intend to conceal, but no evidence was presented that verified how much time he spent at each location.

The statements made by the Respondent's husband to the investigator combined with the lease he signed as a co-tenant with the Respondent commencing on February 1, 2012, is evidence supporting a claim that the Respondent was living with her husband as early as February 1, 2012. This Administrative Law Judge finds that this supportive evidence is not clear and convincing evidence that the Respondent's husband lived with her while they were married.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

This Administrative Law Judge finds that the Department has failed to establish by clear and convincing evidence that the Respondent intentionally failed to report that she and her husband were living together from September 1, 2010, through June 30, 2012, for the purpose of maintaining Food Assistance Program (FAP) that she would not have been eligible to receive otherwise. The Respondent consistently reported her marriage to the Department on her applications for benefits and the Department accepted her statements that she did not live with her husband until sometime in 2012. The evidence presented on the record does not amount to clear and convincing proof that any time the Respondent's husband spent in her home fits the definition of BEM 212 for "living together." Department policy does not create a different standard for spouses living together than non-related people, and the Respondent's failure to report her husband's temporary presence in her home might be attributed to client error. Since the Department has failed to present clear and convincing evidence of "living together," the Department has failed to establish a duty to report the earned and unearned income of the husband for the purposes of determining the Respondent's eligibility for Food Assistance Program (FAP) benefits. Therefore, the Department has failed to establish an Intentional Program Violation.

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. The Department is ORDERED to delete the OI and cease any recoupment action.

/s/
Kevin Scully
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 23, 2015

Date Mailed: February 23, 2015

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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