

**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.: 14-008877
Issue No.: 3005
Case No.: ██████████
Hearing Date: January 05, 2015
County: OTTAWA (DISTRICT 70)

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 January 5, 2015, 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 7, 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 employment.
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 June 1, 2012 through January 31, 2013 (fraud period).
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. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
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.

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 (8/1/12), (12/1/11), 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. 9-10; 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 and intentional program violation due to the Respondent's alleged failure to report new employment in a timely manner, and failure to report ongoing income. The Respondent had two employers during the alleged fraud period, the first employer was [REDACTED] a temporary employment agency, and the second employer was [REDACTED]o. As regards the employment with [REDACTED], it is clear from the case notes placed in the Respondent's file at the time that on May 7, 2012, the Department was aware and informed by a New Hire Notice for [REDACTED] [REDACTED] the income was temporary and the Department determined that the income was not to be budgeted. Exhibit 1, p.92. No verification regarding this new hire notice was presented as evidence at the hearing. Subsequently, the Respondent began employment with [REDACTED] on April 12, 2012 and ended that job on August 16, 2012. Exhibit 1 page 58 The Respondent's first paycheck was received April 14, 2012.

The Respondent began employment with [REDACTED] on September 20, 2012 and continued employment through February 28, 2013. Exhibit 1 p. 60 and 61. The Respondent completed an application on March 7, 2012. At the time of the application, the Respondent reported no income from employment which was correct. The Respondent did report SSI income received by three of the children in the household. Exhibit 1 p. 28 – 29. The Respondent completed a redetermination on December 3, 2012 and reported the household income which included earnings from [REDACTED] and a start date of September 20, 2012. At the time of the redetermination, the Respondent no longer was employed by [REDACTED]. No verification of employment was produced after the May 7, 2012 determination by the Department that the income from [REDACTED] [REDACTED] should not be budgeted.

Based upon these facts it is determined that the evidence did establish that in May of 2012 the Department determined that the Respondent's employment was temporary, it cannot be determined from the record what, if any, conversation or verification was requested with respect to the [REDACTED] job income. Therefore, although not reported subsequently, this does not in and of itself establish an IPV was intentionally committed by the Respondent as the Department had notice of the job. The Respondent after leaving the [REDACTED] job, immediately started work with [REDACTED] and reported that job start date within approximately 63 days. Again, had the new job not been reported on the redetermination, an IPV would have been established; however, under these facts the job should be reported as late and therefore not an IPV.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 13. 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. 13-14.

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, because the Department did not establish an intentional program violation with respect to employment income and its allegations of failure to report this income, 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, (12/1/11) p. 1.

In this case, the evidence of actual income received by the Respondent during the fraud period from both [REDACTED] and the budgets for each month of the benefits at issue were reviewed and were determined to be correct as presented. The Department also provided an issuance summary demonstrating the over issuance for the fraud period months of June 2012 through January 2013. The Department clearly established through food assistance budgets, Exhibit 1 pp. 139-153, and SSI benefit issuance summary, Exhibit 1 pp. 75-90, issued to the Respondent during the fraud period, that the Respondent did receive an over issuance of food assistance in the amount of [REDACTED]. The Department clearly provided information as regards to earned income that was underreported or late reported, and clearly established that the Respondent received more FAP benefits than entitled and, thus, the Department is entitled to recoup the overissuances. It is also clear from the evidence presented that the Department correctly determined that the start date was June 2012 as the Claimant began [REDACTED] employment April 12, 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 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 FAP program.

