

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011357
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: March 17, 2015
County: WAYNE-DISTRICT 31

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 March 17, 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: [REDACTED], the Respondent, and [REDACTED], husband.

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 September 18, 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 cooperate with the local office in determining initial and ongoing eligibility, including completely and truthfully answering all questions and to report any household changes, including changes with income, to the Department.
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 January 2007 through August 2011 (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.

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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1000 or more, **or**
- The total 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 (5-1-2014), pp. 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 (5-1-2014), 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.

Clients must cooperate with the local office in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. See PAM 105, 1-1-2007, p. 5, as well as later versions of the policy that can be found under BAM 105.

Department policy also requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days after the client is aware of them or

the start date of employment. See PAM 105, p. 7, as well as later versions of the policy that can be found under BAM 105.

In this case, it was uncontested that Respondent was aware of the responsibility to cooperate with the local office in determining initial and ongoing eligibility, including completely and truthfully answering all questions and to report any household changes, including changes with income, to the Department. In addition, Respondent had no apparent physical or mental impairment that limited her understanding or ability to fulfill the responsibility to timely report the change within 10 days.

The Department asserts that Respondent did not timely and accurately report the household employment and income circumstances during the alleged fraud period.

Respondent testified that when she had an active benefits case, she tried to report changes to the Department with each change of employment/income. Respondent credibly described her difficulties with trying to report changes to the Department, including changes in caseworkers, caseworkers with full voicemails, a worker being out on medical leave for a long time, not being allowed to talk to the worker or a supervisor when she stopped by the local office, and being directed leave a written note in the drop box. Respondent also explained that because the time frame at issue is so long ago, she no longer has any documentation. Respondent noted that she has not been on assistance for the last five years. Respondent also explained that when she took a job with Chrysler it was supposed to be a temporary job, but later turned out to be permanent. Respondent emphasized that she tried to report changes as she was required to and nothing was intentional.

The evidence does not show that Respondent intentionally failed to report or intentionally inaccurately reported employment and income information. Respondent provided credible testimony regarding her difficulties reporting changes to the Department. Given the number of years that have passed since the alleged fraud period, Respondent's testimony was reasonably detailed and it is understandable that she would no longer have documentation. It is also understandable that Respondent would have initially reported a job as temporary when that was the initial expected duration. Thus, it is understandable that Respondent listed the Chrysler employment as having an anticipated end date on the October 2010 Semi-Annual Contact Report, then continued to list this employment with no end date on the April 2011 Redetermination. Additionally, there was some evidence indicating the earned income information was accurate when it was reported by Respondent. For example, on the May 31, 2007 application, Respondent reported her husband worked 40 hours per week earning \$17.12 per hour. This is consistent with verification from the employer that in May 2007 he earned \$1,369.11 each two week pay period. Overall, the evidence does not establish that the Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Accordingly, the Department has not established that the Respondent committed a FAP IPV by clear and convincing evidence.

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. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. 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 evidence of record did not establish that Respondent committed a FAP IPV, therefore, she is not subject to a 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 record shows that during the above-mentioned fraud period Respondent received an OI of FAP benefits. As noted above, the evidence was not sufficient to establish the OI was due to an IPV. However, the evidence still establishes that the OI occurred. Therefore, the Department must still attempt to recoup the OI.

The Department obtained verification from the employers documenting the actual earnings during the fraud period. Respondent testified that the Social Security Administration is recouping RSDI benefits that had been paid in error. A scan of the re-run FAP budgets indicates the Department did not include any unearned income, such as RSDI benefits, in calculating the OI. When the Department re-ran the FAP budgets with the actual earnings during the fraud period, the total OI was \$ [REDACTED]

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.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that the Department delete and cease any disqualification period related to this OI.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/20/2015**

Date Mailed: **3/20/2015**

CL/hj

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.

cc:

