

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-018092
Issue No.: 1005, 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2015
County: Muskegon

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 15, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], 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) and Family Independence Program (FIP) 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 FIP and 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 December 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 FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to timely and accurately report her 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, 2012 to April 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in FAP benefits and \$ [REDACTED] in FIP benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and an OI in FIP 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 \$500 or more, or
 - the total amount is less than \$500, 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 (10/1/14), p. 14; ASM 165 (5/1/13), p. 4.

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 (5/1/14), 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, Respondent was receiving Unemployment Compensation Benefits (unemployment) from October 30, 2012, through April 19, 2013. In an application for benefits from the Department dated September 6, 2012, Respondent acknowledged her responsibility to report changes in her income within 10 days. (Exhibit A Pages 11-30.) In the application, she stated she had been laid off from a temporary job on September 4, 2012. She also reported that she had no income. In a Redetermination dated April 1, 2013, (Exhibit A Pages 31-34) she reported that she had no income.

The Department presented evidence (Exhibit A Pages 35-37) that Respondent was receiving unemployment beginning September 30, 2012, through at least April 6, 2013. She received \$ [REDACTED] bi-weekly. The Department provided budgets in which it recalculated the benefits she would have received if her income had been accurately and timely reported. (Exhibit A Pages 41-55.) The evidence is clear and convincing that Respondent withheld information from the Department for the purpose of receiving more in benefits than she was eligible to receive.

Disqualification

A client who is found to have committed a IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (4/1/14), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, Respondent committed an IPV in both the FIP and FAP programs. This is her first IPV. She is to be disqualified from receiving benefits in both programs for 12 months.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, Respondent received \$ [REDACTED] in FAP benefits, and \$ [REDACTED] in FIP benefits, during the fraud period. She was eligible to receive \$ [REDACTED] in FAP and \$ [REDACTED] in FIP. She received an OI of \$ [REDACTED] in FAP and an OI of \$ [REDACTED] in FIP. Those benefits are to be recouped.

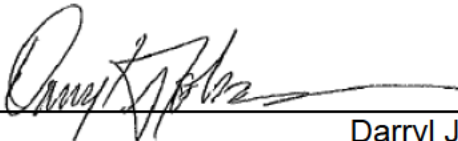
DECISION AND ORDER

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 received an OI of program benefits in the amount of \$ [REDACTED] in FAP and an OI of \$ [REDACTED] in FIP.

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

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



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/20/2015**

Date Mailed: **4/20/2015**

DJ/jaf

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

[REDACTED]