

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-002099
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: April 28, 2015
County: Wayne-District 18

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 28, 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) 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 February 20, 2015, 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 signed an Assistance Application (DHS-1171) on June 19, 2008, and Redeterminations (DHS-1010) on May 4, 2010, and February, 25, 2011, indicating she was disabled and had filed for social security disability and her son was living with her. By signing the forms, Respondent acknowledged that she understood her failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against her. (Dept. Ex A, pp 9-24; 25-28; 29-32).
5. On February 17, 2012, Respondent completed a Redetermination indicating her son only spent 7 days a month in her home and she had hired an attorney and was appealing the denial of social security disability benefits.
6. On April 4, 2012, Respondent submitted a Change Report indicating her son had moved out two years ago.
7. Respondent received \$ [REDACTED] in FAP benefits from the State of Michigan during the alleged fraud period of May 1, 2010, through April, 30, 2012. If Respondent had properly reported that her son had moved out of her home two years ago, Respondent would have been entitled to receive \$ [REDACTED] in FAP benefits. (Dept. Ex A, pp 40-45).
8. Respondent failed to report her son had moved out of her home in a timely manner, resulting in a FAP overissuance of \$ [REDACTED] for the fraud period of May 1, 2010, through April, 30, 2012.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. Respondent was clearly instructed and fully aware of the responsibility to report all changes to the Department within 10 days.
11. Respondent did have an apparent physical or mental impairment that would limit her understanding and her ability to fulfill this requirement as noted on her June 19, 2008, FAP application and every Redetermination thereafter.
12. 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 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 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 \$500 or more, **or**
 - the total OI 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, p 12 (10/1/2014).

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 (10/1/2014), 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.

In this case, the Department has not established that Respondent committed an IPV. Respondent noted she had a disability on her June 19, 2008, FAP application and on every Redetermination thereafter. Therefore, this Administrative Law Judge finds that not all three conditions were met to support the suspected IPV.

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 FAP Overissuance Summary shows Respondent received \$ [REDACTED] a month from May 1, 2010, to April 30, 2012. (Dept. Ex A, pp 40-41). Had Respondent properly reported her son was no longer living in the home, she would only have been eligible to receive \$ [REDACTED] in FAP benefits. Hence, she received an overissuance of \$ [REDACTED] in FAP benefits for the time period of May 1, 2010, to April 30, 2012.

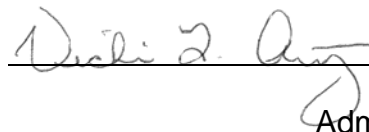
In this case, the Department has shown by clear and convincing evidence that Respondent received an OI of benefits. The OI was due to Respondent failing to timely report her son was no longer in the home. According to BAM 700, the Department may recoup this OI.

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. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

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



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/6/2015**

Date Mailed: **5/6/2015**

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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:

