

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-002928
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 27, 2015
County: JACKSON

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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 three-way telephone hearing was held on July 27, 2015, from Detroit, 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 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 [REDACTED], 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 self-employment 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 [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$6,555 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$5,353 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,202.
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.
11. On or around [REDACTED], Respondent requested an Administrative Disqualification Hearing. See Exhibit A, p. 75.

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 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

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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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.

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 report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (September 2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report her self-employment income and/or misrepresented her income information to the Department, which caused an overissuance of FAP benefits. The Department indicated that Respondent sold items for [REDACTED] through [REDACTED] and received income from it. See Exhibit A, pp. 1 and 4.

First, the Department presented Respondent's application dated [REDACTED], to show that the Respondent was aware of her responsibility to report changes as required. See Exhibit A, pp. 11-30.

Second, the Department presented Respondent's semi-annual contact report (contact report) received on [REDACTED], which was submitted during the alleged fraud period. See Exhibit A, pp. 31-32. In the contact report, Respondent reported self-employment from Pure Romance, but indicated that she received zero as the average monthly income. See Exhibit A, p. 32.

Third, the Department presented verification of Respondent's self-employment income received on or around [REDACTED]. See Exhibit A, pp. 33-37. The self-employment verification indicated gross payments received for the time frame of [REDACTED]. See Exhibit A, pp. 34-45.

Fourth, the Department presented Respondent's alleged social medial profile in which she posted the following on [REDACTED], "I am proud to announce that my total

retail YTD sales \$20,343.00!! My total group sales are \$24,903.50! Thank you [REDACTED] [REDACTED] for this amazing opportunity!" See Exhibit A, p. 71.

Fifth, the OIG agent spoke to the Respondent on February 20, 2015, in which she informed the agent to the following: (i) Respondent denied she had any ebay income, then acknowledged she did have [REDACTED] income that she sold on [REDACTED]; (ii) she only made half of whatever she sold and then stated it wasn't her on [REDACTED] and (iii) denied that she didn't report all her income and stated she wanted a hearing. See Exhibit A, pp. 1 and 4.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits. In this case, the Department presented Respondent's contact report received on [REDACTED] [REDACTED]. See Exhibit A, pp. 31-32. In the contact report, Respondent reported self-employment from [REDACTED] and indicated that she received zero as the average monthly income. See Exhibit A, p. 32. However, the evidence established that Respondent received income (more than zero dollars) at the time she submitted the contact report and in fact, she received income the previous fourth months as well. See Exhibit A, pp. 34-45. This is persuasive evidence that Respondent committed an IPV of her FAP benefits because she intentionally withheld or misrepresented her income information for the purpose of maintaining her FAP benefits.

In summary, there was clear and convincing evidence that Respondent intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; BEM 708 (April 2014), 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, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. 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 amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

Applying the overissuance period standards and in consideration of the Respondent receiving the income on [REDACTED], the Department determined that the OI period began on [REDACTED]. See Exhibit A, pp. 4 and 37. It is found that the Department applied the inappropriate OI begin date and the begin date is [REDACTED]. See BAM 720, p. 7

An individual who runs her own business is self-employed. BEM 502 (October 2012), p. 1. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502, p. 3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. A list of allowable and non-allowable expenses are located in BEM 502. See BEM 502, pp. 3-4. Verification sources for self-employment include income tax returns or other sources listed in BEM 502. See BEM 502, p. 6.

In this case, the Department presented OI budgets for November 2012 to September 2013. See Exhibit A, pp. 50-70. The budgets included Respondent's income that was not previously budgeted. See Exhibit A, pp. 33-45. A review of the OI budgets for November 2012 to September 2013 found them to be fair and correct. See BAM 720, pp. 7 and 10 and BEM 502, pp. 1-6. Thus, the Department is entitled to recoup \$1,106 of FAP benefits it issued from [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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$1,106 from the FAP benefits.

The Department is ORDERED to reduce the OI to \$1,106 for the period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.

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



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/30/2015**

Date Mailed: **7/30/2015**

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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:

