

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

IN THE MATTER OF:

██████████
██
██

Reg. No.: 15-001105
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 1, 2015
County: CALHOUN (DISTRICT 21)

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 June 1, 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 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 January 30, 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 was aware of the responsibility to report changes in 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 FAP fraud period is June 1, 2013 to November 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████.
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 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 (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.

BAM 700 (May 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 or CDC provider 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.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2011), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 1. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 1.

Respondent's applicable group size in this case is three for June 2013 to October 2013 and a group size of four for November 2013.

For the period of June 2013 to September 2013, RFT 250 indicates that the simplified reporting income limit for a group size of three is [REDACTED]. RFT 250 (October 2012), p. 1.

For the period of October 2013 to November 2013, RFT 250 indicates that the simplified reporting income limit for a group size of three is [REDACTED] and [REDACTED] for a group size of four. RFT 250 (October 2013), p. 1.

In this case, the Department alleges that Respondent who is a food assistance simplified reporter, committed an IPV of her FAP benefits because she failed to report the income exceeding the reporting limits, which caused an overissuance of FAP benefits.

First, the Department presented Respondent's application dated November 20, 2012, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 12-29.

Second, the Department presented Respondent's Notice of Case Action dated January 2, 2013, which notified her of the ongoing obligation to report to the Department if her

household's monthly gross income exceeded the simplified reporting limit of [REDACTED] (group size of three). Exhibit A, pp. 97-103.

Third, the Department presented Respondent's semi-annual contact report (semi-annual) received on May 17, 2013. See Exhibit A, pp. 30-31. In the semi-annual, Respondent reported an additional group member to her public assistance case; however, the Department argued that Respondent failed to report the additional group member's earned income. See Exhibit A, pp. 30-31. Respondent indicated that the change occurred in March of 2013. See Exhibit A, p. 30. In fact, the semi-annual indicated that the household's monthly gross earned income (before taxes) used in her food assistance budget is [REDACTED]. See Exhibit A, p. 31. Respondent marked "no" to the question if whether her household's gross earned income changed by more than [REDACTED] from the above amount. See Exhibit A, p. 31. Moreover, Respondent marked "no" to the question if whether anyone had a change in earnings because they changed, started, or stopped a job. See Exhibit A, p. 31.

Fourth, the Department presented Respondent's Wage Match Client Notice (wage match) received on October 30, 2013. See Exhibit A, pp. 32-44. The wage match was completed by the additional group member's employer in which it reported that he began employment on March 18, 2013. See Exhibit A, p. 33. The employer also included the additional group member's pay stubs for the period of April 4, 2013 to October 24, 2013. See Exhibit A, pp. 34-44.

Fifth, the Department presented additional pay stubs received on November 20, 2013, which were regarding the additional group member's employment for the period of October 10, 2013 to November 9, 2013. See Exhibit A, pp. 45-49. Respondent included a letter stating she reported her additional group member was working back in March (2013) to her old caseworker. See Exhibit A, p. 48.

Sixth, the Department presented Respondent's employment verification received on May 1, 2014 and her pay stubs. See Exhibit A, pp. 52-68. The Department also presented the additional group member's employment verification received on December 27, 2013 and his pay stubs. See Exhibit A, pp. 69-74.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits.

In this case, the Department presented Respondent's semi-annual dated May 17, 2013. See Exhibit A, pp. 30-31. In the semi-annual, Respondent reported an additional group member to her public assistance case; however, Respondent failed to report the additional group member's earned income. See Exhibit A, pp. 30-31. The evidence established that the additional group member was employed at the time Respondent submitted the semi-annual. See Exhibit A, pp. 69-74. Thus, the evidence presented that Respondent was aware that the additional group member was employed at the time of semi-annual and that she failed to report his income. This is persuasive evidence

that Respondent committed an IPV of her FAP benefits because she intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

As stated previously, on November 20, 2013, Respondent included a letter stating she reported her additional group member was working back in March (2013) to her old caseworker. See Exhibit A, p. 48. However, the evidence record did not indicate that she had reported the income back in March 2013 nor was Respondent present at the hearing to provide support for her allegation that she timely reported the income.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report the income and that she intentionally withheld or misrepresented the 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 disqualified from FAP benefits for 12 months. BAM 720, p. 16.

Overissuance

As stated previously, the Department showed that Respondent committed an IPV. The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 5. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, p. 5. Groups report if their actual income for a month exceeds 130 percent of poverty level. BAM 200, p. 5 and see also BAM 720, p. 7 (For FAP simplified reporting, the household has until the 10th of the following month to report the change timely (see BAM 200)).

Applying the above standard, the Department determined that the OI period began on June 1, 2013. See Exhibit A, p. 4. It is found that the Department applied the appropriate OI begin date. See BAM 200, p. 5 and BAM 720, p. 7.

Additionally, 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.

In this case, the Department presented OI budgets for June 2013 to November 2013. See Exhibit A, pp. 75-95. The budgets included the additional group member's income that was not previously budgeted. A review of the OI budgets for June 2013 to November 2013 found them to be fair and correct, except for September 2013. The Department concluded that the FAP group's income exceeded the limit for September 2013. See Exhibit A, p. 88. However, for September 2013, RFT 250 indicates that the simplified reporting income limit for a group size of three is [REDACTED]. RFT 250 (October 2012), p. 1. Respondent's income of [REDACTED] for September 2013 is below the [REDACTED] income limit. Therefore, the evidence is unclear why the Department concluded that Respondent's income exceeded the SR income limit for September 2013, when in fact she was below the limit. The Department failed to satisfy its burden of showing that it properly calculated the OI amount for September 2013 and therefore, the [REDACTED] OI amount for September 2013 is subtracted from the total OI amount. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits for the time period of June 1, 2013 to August 31, 2013, and October 1, 2013 to November 30, 2013.

It should be noted that disqualified members are not included in the group size when determining the income limit. BAM 200, p. 1. However, their budgetable income is included in the group's total gross income when comparing to the income limit. BAM 200, p. 1. The additional group member was a disqualified member for the period of June 2013 and October 2013; hence why the group size was only three for this period. See Exhibit A, pp. 76-95.

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 [REDACTED] from the FAP benefits.

