

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-002879
Issue No.: FOOD ASSISTANCE PROGRAM
Case No.: [REDACTED]
Hearing Date: April 16, 2015
County: CALHOUN (DISTRICT 21)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 16, 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, [REDACTED], Daughter, and [REDACTED], Daughter In Law.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and State Disability Assistance (SDA) 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 and SDA?

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 March 5, 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 and SDA benefits issued by the Department.

4. Respondent was aware of the responsibility to report any household changes, including changes with income, to the Department.
5. Respondent had 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 October 2012 through June 2013 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP and SDA 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 and SDA 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 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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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

- 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 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 (May 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 asserts that Respondent failed to report income from Veterans Administration (VA) benefits to the Department. The Department initially asserted the fraud period for FAP began in July 2012 and the fraud period for SDA began in August 2012. Upon review of documentation Respondent brought to the April

16, 2015, hearing proceedings, the OIG Regulation Agent confirmed that on August 27, 2012, the VA issued an award letter approving benefits. Accordingly, Respondent likely did not receive this income until sometime in September 2012. The OIG Regulation Agent agreed that the fraud period should therefore be adjusted to start in October 2012.

Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days of receiving the first payment reflecting the change. BAM 105, September 1, 2012, p. 7. Respondent's signatures on the Assistance Application and Redetermination in this record indicate that she was aware of the change reporting responsibilities and that fraudulent participation in benefits could result in criminal or civil or administrative claims.

Respondent's testimony indicated that around the time of her July 12, 2012, application, she had difficulties with understanding and complying with the Department's rules and responsibilities. Respondent's husband passed away on June 30, 2012. Respondent was being treated for cancer and underwent chemotherapy and radiation. It is noted that Respondent reported she was unable to work due to cancer on the Assistance Application. Respondent also explained that bank accounts were frozen and funds from benefits Respondent's husband had been receiving were being direct deposited into the account, then taken back out. The bank statements support this testimony. Additionally, Respondent explained that her husband owed a lot of money when he passed away. Therefore, a car was repossessed and garnishments were occurring. Respondent asserted that there was too much for to keep track of during that time.

Additionally, Respondent explained that she did not believe she needed to report the VA issued Dependency and Indemnity Compensation benefits. Respondent explained that the benefits relate to the VA denying and delaying treatment for her husband until it was too late and he died. Respondent asserted that she was told she did not have to report this benefit to anyone and that the income would not count against her for anything.

The evidence supports that Respondent had an apparent physical or mental impairment that limits understanding or ability to fulfill the reporting responsibilities based on the difficulty of Respondent's circumstances around the time of the July 2012 application and when Respondent began receiving the VA benefit. Further, while Respondent failed to report the income from the VA benefit on the June 7, 2013, Redetermination form, she did submit some documentation of the VA benefit that same date. Specifically, a Department of Veterans Affairs letter shows a received date stamp of June 7, 2013. Thus, at the end of the fraud period Respondent had at least submitted some documentation making the Department aware of the income from the VA benefit. Accordingly, the Department has not established that the Respondent committed an IPV by clear and convincing evidence.

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, p. 15; BEM 708 (April 1, 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 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. 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 evidence of record does not establish that Respondent committed a FAP and SDA IPV, therefore, she is not subject to disqualification.

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, the evidence of record shows that during the above-mentioned fraud period Respondent received an OI of FAP and SDA benefits. As noted above, the evidence was not sufficient to establish the OI was due to an IPV. However, the evidence does establish that the OI occurred. Therefore, the Department must still attempt to recoup the OI.

The evidence of record shows that during the above-mentioned fraud period Respondent received an OI of FAP and SDA benefits in the amount of \$ [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 and SDA programs.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period of October 2012 through June 2013, and initiate recoupment/collection procedures 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, Director
Department of Health and Human Services

Date Signed: **4/21/2015**

Date Mailed: **4/21/2015**

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

cc:

