

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

IN THE MATTER OF:

██████████
██████████
██

Reg. No.: 15-004101
Issue No.: 3005
Case No.: ██████████
Hearing Date: May 6, 2015
County: WAYNE-DISTRICT 17
(GREENFIELD/JOY)

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 telephone hearing was held on May 6, 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 March 26, 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 unearned 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 August 1, 2005 to May 31, 2006 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP 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.

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.

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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (July 2005), p. 7. Changes must be reported within 10 days:

- after the customer is aware of them, or
- the start date of employment.

PAM 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 5 hours per week that is expected to continue for more than one month.
- Unearned income
 - starting or stopping a source of unearned income
 - change in gross monthly income of more than \$50 since the last reported change.

PAM 105, p. 7.

In this case, the Department's alleges that Respondent committed an IPV of her FAP benefits from August 1, 2005 to May 31, 2006. See Exhibit 1, p. 4. The Department argued that Respondent failed to timely report her unearned income, which caused an overissuance of benefits. As such, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to accurately report her income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

Moreover, the Department alleges that Respondent received an OI amount of \$ [REDACTED] during the alleged fraud period. See Exhibit 1, p. 4. 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 establishing the OI amount, the Department presented Respondent's FAP budgets for the period of August 2005 to May 2006. See Exhibit 1, pp. 29-48. A review of the

FAP budgets found them to be inaccurate. Several of the budgets included calculations of the unearned income, which could not be verified. For example, the Department failed to provide sufficient verifications regarding Respondent's unearned income received for the benefit periods relating to the year 2005. See Exhibit 1, p. 27 (Payment summary report for the billing period of January 1, 2005 to December 31, 2005). In fact, a documentation record indicated Respondent received [REDACTED] from the uninsured motorists' pool since August 2005; however, the Department budgeted [REDACTED] instead for August 2005. See Exhibit 1, pp. 20 and 30. It is unclear why there is this discrepancy and the Department was unable to provide sufficient verifications regarding Respondent's unearned income received for benefit periods relating to the year 2005.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (January 2015 and April 2015), p. 35. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, pp. 35-36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, pp. 37-38.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI amount for FAP benefits. BAM 600, pp. 35-38. There is evidence to show an OI is present, however, the Department also needs to establish how it calculated the OI amount (i.e., unearned income). Because the Department failed to present sufficient evidence on how it calculated the FAP OI amount, the Department did not satisfy its burden of showing that it acted in accordance with Department policy. BAM 600, pp. 35-38; BAM 700, p. 1; and BAM 720, p. 8.

Furthermore, an IPV requires that an OI exist. Department policy states that suspected IPV means an OI exists for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1. Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. BPG 2014-015 (July 2014), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2014-015, p. 36. Because the Department cannot establish an OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP program. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16.

