

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 15-005537  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: June 24, 2015  
County: Ingham

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**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 Wednesday, June 24, 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: the Respondent.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Adult Home Help (AHH) 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 April 10, 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 FAP and AHH benefits.

3. Respondent was a recipient of FAP benefits and AHH issued by the Department.
4. On the Assistance Applications, DHS 1171, signed by Respondent on December 18, 2008, December 14, 2009, December 20, 2010, February 17, 2011 and the Adult Services Application, DHS 390, signed by the Respondent on September 27, 2010, the Respondent reported that she understood the responsibility to report changes in household income to the department within 10 days. Department Exhibit 13-80 and 206-207.
5. Respondent was aware of the responsibility to report changes in household group composition of her marriage to her husband September 15, 2007 and her husband employment income earned income from employment at Michigan Department of Corrections. Department Exhibit 81-99.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2010 through September 30, 2012 for AHH, December 1, 2008 through November 30, 2010 for FAP, February 1, 2011 through September 30, 2012 (fraud period). Department Exhibit 100-205.
8. During the fraud period, Respondent was issued [REDACTED] in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. Department Exhibit 100-205.
9. The Department alleges that Respondent received an OI in FAP of [REDACTED] and in AHH of [REDACTED] benefits in the amount of [REDACTED]. Department Exhibit 100-205.
10. This was Respondent's first alleged IPV for AHH and third alleged IPV for FAP. Department Exhibit 208.
11. 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 Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 \$1000 or more, or
  - the total OI amount is less than \$1000, **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. 10.

### **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, p. 6; 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.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710, p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. 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.

In this case, the OIG has requested that Respondent be disqualified from receiving program FAP and AHH benefits. Respondent was a recipient of FAP benefits and AHH issued by the Department. On the Assistance Applications, DHS 1171, signed by Respondent on December 18, 2008, December 14, 2009, December 20, 2010, February 17, 2011 and the Adult Services Application, DHS 390, signed by the Respondent on September 27, 2010, the Respondent reported that she understood the responsibility to report changes in household income to the department within 10 days. Department Exhibit 13-80 and 206-207.

Respondent was aware of the responsibility to report changes in household group composition of her marriage to her husband September 15, 2007 and her husband earned income from employment at [REDACTED]. Department Exhibit 81-99. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Since the Respondent was married, her husband's earned employment income from the Department of Corrections was required to be budgeted in determining her FAP eligibility. In addition, the Claimant was not eligible for AHH services because she had a husband in the home whose presence and income needed to be considered in determining eligibility for AHH.

The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2010 through September 30, 2012 for AHH, December 1, 2008 through November 30, 2010 for FAP, February 1, 2011 through September 30, 2012 (fraud period). Department Exhibit 100-205. During the fraud period, Respondent was issued \$31,931.21 in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. Department Exhibit 100-205. The Department alleges that Respondent received an OI in FAP of [REDACTED] and AHH of [REDACTED] benefits for a total overissuance in the amount of [REDACTED]. Department Exhibit 100-205. This was Respondent's first alleged IPV for AHH and third alleged IPV for FAP. Department 208.

During the hearing, the Respondent stated that she and her husband were not together during the contested time period. She submitted the following documentation to prove that he was not in the home. On April 26, 2013, the Respondent's husband completed a sworn statement of Defendant's answer from the 30<sup>th</sup> Circuit Court. Respondent Exhibit 1-18. The Respondent's husband stated that he started working for the [REDACTED] in October 2006. Respondent Exhibit 2. He stated that he was absent from the home for the past 3 years, which would be 2010. Respondent Exhibit 2. Even though he wasn't in the home, he was still paying half of his wife's, the Respondent's, rent and cell phone bill. Respondent Exhibit 3. The Respondent's husband stated that they filed income taxes jointly in 2012 and 2013. Respondent Exhibit 4. On February 14, 2013, the Respondent received a letter from the Ingham County Prosecutor based on a domestic violence incident. Respondent Exhibit a. A subsequent, personal protection order on February 14, 2013 to the Respondent's husband address at [REDACTED]. Respondent Exhibit b-f. This occurred in February 2013, which is outside the contested time period.

In addition, the Respondent submitted proof of [REDACTED] and [REDACTED] addresses for bank accounts and vehicle registration for her husband. The Court does not find that information persuasive because quite a few people commute from other cities for employment where they live with relatives or get an apartment for convenience, then commute home on the weekends and holidays. The permanent address stays the same because they have intent to return home and that is where their families reside. Although the Respondent stated that she told her Department Caseworker that she had gotten married, she presented no evidence at the hearing and there was no documentation in the existing case file. In addition, the OIG Agent presented the

applications submitted by the Respondent that did not list her husband or the Respondent as being married.

The OIG Agent countered that the Respondent's husband was found in the home in August of 2012. On August 27, 2012, an adult services worker who made a visit to the home found the Respondent's husband in the home in his [REDACTED] uniform with the name tag, [REDACTED], and who identified himself as the Respondent's husband. He stated that they had been married for years, which triggered a fee investigation. Department Exhibit 83. A Fee Investigator visited the home on August 31, 2012 where a man named [REDACTED] answered the door and confirmed he was the Respondent's husband. The address in question was [REDACTED], [REDACTED]. The Respondent's husband admitted that he had lived there full time since January of 2012 where before they had a trial separation. He worked for the [REDACTED] since 2006. He currently works for the [REDACTED]. He knew that his wife, the respondent, had applied and was receiving FAP. Department Exhibit 82-84. The Respondent has failed to inform the Department that she was married and that her husband was employed and earning income.

As a result, this Administrative Law Judge finds that the Respondent received an over issuance that the Department is required to recoup because she failed to inform the Department that she was married and that her husband had earned income as is required by policy. Department Exhibit 1-208. The Respondent received an OI in FAP of [REDACTED] and AHH of [REDACTED] benefits for a total overissuance in the amount of [REDACTED]. Department Exhibit 100-205.

### **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 did commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] of FAP of [REDACTED] and AHH of [REDACTED] benefits.
3. The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

4. It is FURTHER ORDERED that Respondent be disqualified from the FAP program for a period of a lifetime.

*Carmen G. Fahie*

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Carmen G. Fahie  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **7/9/2015**

Date Mailed: **7/9/2015**

CGF/las

**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:

