

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

IN THE MATTER OF:

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Reg. No.: 15-005837
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 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); and ██████████ Eligibility Specialist (Department's witness 1). Participants on behalf of Respondent included: Respondent, ██████████.

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 April 20, 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 amended time period it is considering the FAP fraud period is October 1, 2013 to January 31, 2014 (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 [REDACTED] 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.

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 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 (October 2013), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

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. 9.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to timely report her return to employment after her leave of absence, which caused an overissuance of FAP benefits.

First, the Department presented Respondent's application dated February 7, 2013, to show that the Respondent was aware of her responsibility to report changes as required. See Exhibit A, pp. 12-28.

Second, the Department presented verification from the Respondent dated July 30, 2013, which reported her leave of absence from her employment. See Exhibit A, p. 29. Then, the Department presented Respondent's Notice of Case Action dated August 2, 2013, which informed Respondent that her earned income had been removed from her FAP budget due to her leave of absence. See Exhibit A, pp. 30-37. Moreover, the Notice of Case Action informed Respondent under the comments section to report to the Department when she returns to her employment within 10 day of her first paycheck. See Exhibit A, p. 30.

Third, the Department presented Respondent's Verification of Employment received on February 13, 2014. See Exhibit A, pp. 39-40. The Verification of Employment indicated that Respondent received a pay check on August 15, 2013, and received wages through January 30, 2014. See Exhibit A, pp. 39-40.

Fourth, the Department indicated that DHHS became aware of the unreported income during a redetermination interview on February 27, 2014. See Exhibit A, p. 1.

At the hearing, Respondent argued that she did not commit an IPV; however, she admitted that she did not contact the Department within 10 days to report that she had returned back to work. Respondent testified that her maternity leave was from May 2013 to July 2013. Thereafter, Respondent testified that she recalled receiving a phone call from her caseworker (Department's witness 1) in July 2013. Respondent could not recall what the manner of the phone call was regarding; however, she testified that she notified the DHHS caseworker that she had returned to work. In response, the DHHS caseworker provided testimony that she would have documented any pertinent information provided in the phone conversation in July of 2013. The DHHS caseworker infers that if Respondent notified the caseworker if she had in fact returned to work, then she would have documented such a reported change (i.e., case comments).

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

First, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld information. The Department presented several documents, however, they were all dated before or after the alleged fraud period.

Second, Respondent credibly testified that she did not intentionally withhold her income information (return from leave of absence) for the purpose of maintaining Michigan FAP eligibility. This Administrative Law Judge (ALJ) finds that the Respondent credibly testified that she reported to the Department in July 2013 her return back to work. In fact, even though Respondent did not report the changes timely, she eventually notified the Department of the reported changes either in her conversation in July 2013 or the redetermination telephone interview in February of 2014. There is evidence to show that an OI is present in this case, but the evidence fails to show by 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. The Department has failed to establish that Respondent committed an IPV of FAP benefits.

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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error overissuance occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

A client error is present in this situation because Respondent admitted that she did not contact the Department within 10 days to report that she had returned back to work. See BAM 105, p. 9. Thus, an OI was present for FAP benefits.

Applying the overissuance period standards and in consideration of the Respondent receiving the income on August 15, 2013, the Department determined that the OI period began on October 1, 2013. See Exhibit A, pp. 4 and 40. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

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 715, p. 6.

In this case, the Department presented OI budgets for October 2013 to January 2014. See Exhibit A, pp. 24-38. The budgets included Respondent's income that was not previously budgeted. See Exhibit A, pp. 39-40. A review of the OI budgets for October 2013 to January 2014 found them to be fair and correct, except for October 2013. See BAM 715, p. 8. In regards to October 2013, the Department indicated that Respondent was only entitled to [REDACTED] for that month and even provided policy showing such. See Exhibit A, pp. 41-46. However, the Department cited the improper policy for October 2013 and in fact; RFT 250 indicated that Respondent was entitled to [REDACTED] in FAP benefits based on Respondent's net income of [REDACTED] and a group size of three. See RFT 260 (October 2013), p. 12. As such, the Department failed to satisfy its burden of showing that it properly calculated the OI amount for October 2013 and this OI amount is subtracted from the total OI amount sought. Thus, the Department is only entitled to recoup [REDACTED] ([REDACTED] original OI amount sought minus [REDACTED] OI amount for October 2013) of FAP benefits it issued from November 1, 2013 to January 31, 2014.

