

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007671
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 23, 2015
County: WAYNE-DISTRICT 57

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 July 23, 2015, from Detroit, Michigan. The Department was represented by [REDACTED], 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 [REDACTED], 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 employment wages.
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 [REDACTED] to [REDACTED], and [REDACTED] [REDACTED], [REDACTED] (fraud periods).
7. During the fraud period, Respondent was issued \$3,984 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,810 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,174.
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 (March 2013 and April 2014), pp. 7 and 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, pp. 7 and 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, pp. 7 and 9.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to report his employment and wages to the Department, which caused an overissuance of FAP benefits.

First, the Department presented Respondent's online application dated [REDACTED], [REDACTED] to show that the Respondent was aware of his responsibility to report changes as required. See Exhibit A, pp. 11-28.

Second, the Department presented Respondent's Verification of Employment. See Exhibit A, pp. 29-32. The Verification of Employment indicated that Respondent received wages from [REDACTED], and [REDACTED]. See Exhibit A, pp. 29-32.

Third, the OIG investigative report indicated that the OIG agent spoke with Respondent on April 7, 2015, and the OIG nvestigative report summarized the following from the conversation: (i) he indicated that he did inform his DHHS caseworker of his employment and even received a form to have his employer complete; (ii) he brought the form to his employer, which the employer indicated that it had to be sent to corporate headquarters to be completed; (iii) Respondent thought the form had been sent to the headquarters, but did not know what happended afterwards; and (iv) he believed that he had the paperwork at home to show that he reported his employment to the Department See Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld his income information. The Department presented Respondent's application, however, this was before the alleged fraud period. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his 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 failed to notify the Department of his earned income. In regards to policy, the evidence established that Respondent did not report the earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, pp. 7 and 9. Thus, an OI was present for FAP benefits.

Applying the overissuance period standards and in consideration of the Respondent receiving the unreported income on [REDACTED] and [REDACTED], the Department determined that the OI periods began on [REDACTED] and [REDACTED]. See Exhibit A, pp. 4 and 31-32. It is found that the Department applied the appropriate OI begin dates. 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 April 2013 to October 2013 and June 2014 to August 2014. See Exhibit A, pp. 35-62. The budgets included Respondent's income that was not previously reported from the employer's verification. See Exhibit A, pp. 31-32. A review of the OI budgets for the OI period of April 2013 to October 2013 found them to be fair and correct. See BAM 715, p. 8. Thus, the Department is entitled to recoup \$1,847 of FAP benefits it issued from [REDACTED] to [REDACTED].

Additionally, a review of the OI budgets for the OI period of June 2014 to September 2014 found them to be fair and correct, except for August 2014 to September 2014.

In regards to the period of June 2014 to July 2014, the Department presented evidence that Respondent received wages during the OI period based on his wage history report and his actual amount of income he received. See Exhibit A, pp. 29-32. A review of Respondent's actual income received indicated that Respondent was overissued benefits for the OI period of June 2014 to July 2014. See BAM 715, p. 8 and Exhibit A, p. 32. For June 2014 to July 2014, the Department calculated Respondent's income to be \$1,382 for June 2014 and \$889 (based on the wage match). See Exhibit A, pp. 29 and 57-60. However, Respondent's actual income received for June 2014 was \$1,830.86 and \$1,198.52 for July 2014. See Exhibit A, p. 32. Therefore, the Department under budgeted Respondent's actual gross income he received for June 2014 to July 2014, which is to the favor of the Respondent. Nevertheless, the Department is entitled to recoup \$237 of FAP benefits it issued to Respondent from [REDACTED].

It should be noted that Respondent's benefit summary inquiry included a recoupment amount for June 2014 to July 2014. See Exhibit A, p. 34. It appears that mostly likely it is Administrative Recoupment (AR). In regards to the OI calculation of FAP benefits, the amount of Electronic Benefit Transfer (EBT) benefits received in the calculation is the gross (before AR deductions) amount issued for the benefit month. See BAM 715, p. 7 and BAM 725 (July 2014), p. 1. Thus, the Department properly included the gross amount of FAP benefits received before AR deductions in the OI calculation amount. See BAM 715, p. 7 and BAM 725, p. 1.

In regards the OI period of August 2014, the Department miscalculated the actual amount of benefits received for this period. The Department calculated Respondent's total amount of benefits received to be \$367; however, Respondent was only issued \$347 for August 2014 (gross amount of FAP benefits received before AR deductions in the OI calculation amount). See Exhibit A, pp. 34, 52, and 61 and see BAM 715, p. 7. Therefore, the Department failed to satisfy its burden of showing that Respondent received an OI of FAP benefits for August 2014

In regards to the OI period of September 2014, the Department failed to present any OI budget for this benefit period. Therefore, the Department failed to satisfy its burden of showing that Respondent received an OI of FAP benefits for September 2014.

In summary, the Department is entitled to recoup \$2,084 for the period [REDACTED], and [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 \$2,084 from the FAP benefits.

The Department is ORDERED to reduce the OI to \$2,084 for the period [REDACTED], and [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/28/2015**

Date Mailed: **7/28/2015**

EF / hw

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:

