

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007808
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 27, 2015
County: JACKSON

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 July 27, 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 earnings.
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] (fraud period).
7. During the fraud period, Respondent was issued \$1,383 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,383.
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 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 (January 2010), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 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 five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

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

Furthermore, the Department alleges that Respondent received an OI amount of \$1,383 during the alleged fraud period. See Exhibit A, p. 3. 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 OI budgets for the period of October 2010 to March 2011. See Exhibit A, pp. 16-36. A review of the OI budgets found them to be inaccurate. In this case, the Department budgeted the spouse's income by taking the monthly average from her quarterly earnings. For example, the spouse's wage match reported her total earnings for the fourth quarter of 2010 (October through December) was \$2,880. See Exhibit A, p. 12. As a result, the Department calculated the spouse's monthly income from October 2010 to December 2010 to be \$960 (\$2,880 divided by 3 months).

Policy states if improper reporting or budgeting of income caused the overissuance, the Department uses actual income for the overissuance month for that income source. BAM 720, p. 10. The Department converts all income to a monthly amount. BAM 720, p. 10. Exception, for FAP only, do not convert the averaged monthly income reported on a wage match. BAM 720, p. 10. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 720, p. 10.

Based on the above policy, the Department is unable to use the spouse's wage match as a method in determining her budgetable income for each OI month. See BAM 720, p. 10. The spouse's wage match fails to provide the actual income she received each OI month because it only reports her quarterly earnings, not monthly earnings. The Department failed to provide any other verifications to show the actual income the spouse received for each OI month (i.e., payroll stubs). Because the Department failed to establish that it properly budgeted the spouse's income in the OI budgets, the Department did not satisfy its burden of showing that Respondent received an OI for FAP benefits. See BAM 700, p. 1 and BAM 720, pp. 1, 8, and 10.

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 2015-005 (April 2015), 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 2015-005, 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 his FAP program. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16.

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 not** receive an OI of program benefits in the amount of \$1,383 from the FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action.




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

Date Signed: **7/30/2015**
Date Mailed: **7/30/2015**

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:

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