

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008863
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: August 20, 2015
County: WAYNE-DISTRICT 31

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 August 20, 2015, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included Respondent, [REDACTED].

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 benefits?

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 changes in employment and 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] (fraud period).
7. During the fraud period, Respondent was issued \$3,505 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,257 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,248.
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. Program Administrative Manual (PAM) 105 (April 2007), p. 7. Changes must be reported within 10 days: after the client 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.

PAM 105, p. 7.

In this case, the Department's OIG Investigation Report (OIG report) indicated that Respondent has been employed with the employer at issue since 2003. See Exhibit A, p. 3. Moreover, the OIG report stated that when Respondent was laid off from work, she applied for public assistance. See Exhibit A, p. 3. However, the Department argued that Respondent had returned to work in April of 2007 and failed to notify the Department of this change, resulting in the alleged OI/IPV of her FAP benefits. See Exhibit A, p. 3.

First, the Department presented Respondent's application dated [REDACTED], to show that she was aware of her responsibility to report changes as required. See Exhibit A, pp. 10-16. In the application, Respondent reported the following: (i) she indicated that someone in her household expected to receive income this month and that it would be \$230 on or around a Friday in January 2007; (ii) she indicated that she was laid off from [REDACTED]; and (iii) she marked "no" to the question if any person is employed or self-employed, but reported that she received earned income with the employer at issue. See Exhibit A, pp. 10, 11, and 12-13.

Second, the Department presented Respondent's Verification of Employment received in November of 2007. See Exhibit A, pp. 17-19. The Verification of Employment indicated that Respondent received wages from April 2007 to November 2007. See Exhibit A, pp. 18-19.

At the hearing, Respondent argued that she did not commit an IPV of her FAP benefits. Respondent argued that she did notify the Department of her employment and earnings. In regards to Respondent's application dated [REDACTED], she testified as to the

following: (i) she was employed at the time of the application; (ii) she was laid off from [REDACTED] and properly notated that time period in her application (See Exhibit A, p. 11); (iii) she mistakenly marked “no” to the question if any person was employed or self-employed (See Exhibit A, p. 12); and (iv) she properly notated in the application that she received earned income at the time of application (See Exhibit A, p. 13).

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 her income information. The Department presented Respondent’s application, however, this was before the alleged fraud period.

Second, Respondent properly notified the Department in her application that she was employed. Respondent reported that she had been laid off from [REDACTED], but indicated in two different sections of the application that she was employed. See Exhibit A, pp. 10 and 13. It should be noted that Respondent did mark “no” to the question if any person was employed or self-employed; however, she properly reported at the following page of the application that she received earned income. See Exhibit A, p. 13. This evidence shows that Respondent did not intentionally withhold or misrepresent her income information as she properly reported her income to the Department.

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 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.

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

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), 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 705 (July 2014), p. 6.

An agency error is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. BAM 705, p. 1. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions such as services staff.
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

BAM 705, p. 1. If unable to identify the type record it as an agency error. BAM 705, p. 1.

An agency error is present in this situation because the Department failed to act on Respondent's reported income information at the time of application. See Exhibit A, p. 13.

In the present case, the Department presented OI budgets for the period of May 2007 to November 2007. See Exhibit A, pp. 22-40. Monthly budgets were provided for the FAP program using the employers' verification. See Exhibit A, pp. 17-19. A review of the OI budgets found them to be improperly calculated.

As to the time period of May 2007 to October 2007, the Department failed to provide Respondent with the 20 percent earned income deduction on her earnings. The Department budgets the entire amount of earned and unearned countable income. Program Eligibility Manual (PEM) 550 (January 2007), p. 1. The gross countable earned income is reduced by a 20% earned income deduction. PEM 550, p. 1. For client error overissuances (OIs) due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 715 (July 2014), p. 8. However, for agency error OIs, the policy to exclude the 20 percent earned income deduction is not applicable. See BAM 705, pp.

1-12. Respondent's case only involves an OI based on agency error for the period of May 2007 to November 2007. A review of each OI month found that the Department failed to allow the 20 percent earned income deduction for Respondent's reported earnings for the period of May 2007 to October 2007. See Exhibit A, pp. 22-35.

As to the benefit month of November 2007, the Department improperly budgeted Respondent's total earned income. For the benefit month of November 2007, the Department calculated Respondent's income based on her weekly earnings from October 2007. See Exhibit A, pp. 36-37.

Policy states that if improper budgeting of income caused the overissuance, the Department uses actual income for the past overissuance month for that income source. BAM 705, p. 7. The Department converts income received weekly or every other week to a monthly amount. BAM 705, p. 7. The Department's system (Bridges) will automatically convert based on answers to on-screen questions. BAM 705, p. 7. Exception, for FAP only, income is not converted from a wage match for any type of overissuance. BAM 705, p. 7. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 705, p. 7.

Based on the above policy, the Department is unable to use Respondent's income received in October 2007 to determine her budgetable income for November 2007. See BAM 705, p. 7. The Department failed to budget Respondent's actual income she received in November 2007 for this OI month.

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 properly establish an OI amount for the FAP benefits. As such, the Department failed to establish that it properly calculated an OI of FAP benefits for the period of [REDACTED], in accordance with Department policy.

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 \$2,248 from the FAP program.

The Department is **ORDERED** to delete the OI and cease any recoupment action and Respondent is **NOT** subject to disqualification from the FAP program.



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

Date Signed: **8/25/2015**

Date Mailed: **8/25/2015**

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:

