

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-010411
Issue No.: 1005; 3005
Case No.: [REDACTED]
Hearing Date: August 13, 2015
County: WAYNE-DISTRICT 49

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 13, 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 Family Independence Program (FIP) and 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 and FIP 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 and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in group composition and 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 FAP/FIP fraud period is [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$10,380 in FAP/FIP 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/FIP benefits in the amount of \$10,380.
9. This was Respondent's first alleged FAP IPV and second alleged FIP 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

As a preliminary matter, Respondent testified that her alleged IPV in this case had been dismissed by the prosecutor's office. In 2009, Respondent testified that she spoke to the prosecutor and was informed that her case would be dismissed for lack of evidence.

Under the OIG responsibilities section, policy states that suspected IPV cases are investigated by OIG. BAM 720, p. 12. Within 12 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS).
- Return non-IPV cases to the Recoupment Specialist (RS).

BAM 720, p. 12.

Policy further states that the OIG requests IPV hearing for cases involving the prosecution of welfare fraud or FAP trafficking that is declined by the prosecutor for a reason other than lack of evidence...See BAM 720, p. 12.

Finally, the Department recoups the overissuance as client or provider error if:

- Prosecution is declined for lack of IPV evidence, and
- OIG did not pursue an IPV hearing, and
- There is enough information to determine the OI amount, and
- It is not due to agency error.

BAM 720, p. 14.

Based on the above information and Respondent's testimony, it would appear that the undersigned lacks the jurisdiction to address the IPV because policy states that the Department would not pursue an IPV hearing when the prosecution of welfare fraud cases was declined by the prosecutor for lack of evidence. See BAM 720, p. 12. Instead, policy directs the Department to recoup the overissuance as client or provider error as long as the conditions were met per BAM 720, p. 14. Nevertheless, neither party presented any documentary evidence that Respondent's case had been forwarded, declined, or declined for lack of evidence from the prosecutor's office. As such, the undersigned proceeded with the hearing to address Respondent's alleged IPV.

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.

Other reporting requirements include, but are not limited to, changes in persons in the home or address and shelter cost changes that result from the move. PAM 105, p. 7.

Additionally, the Program Eligibility Manual (PEM) 212 outlines the process in which the Department determines who is included in the FAP group prior to evaluating the nonfinancial and financial eligibility of everyone in the group. PEM 212 (January 2007), p. 1. FAP group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation.

PEM 212, p. 1.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. PEM 212, p. 1. First determine if they must be included in the group. PEM 212, p. 1. If they are not mandatory group members, then determine if they purchase and prepare food together or separately. PEM 212, p. 1.

Spouses are: legally married, or unmarried couples who tell others they are married or otherwise represent themselves as married (e.g., use the same last name). PEM 212, p. 1. Spouses who live together must be in the same group. PEM 212, p. 1.

Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. PEM 212, p. 1.

For FIP cases, group composition is the determination of which persons living together are included in the FIP program group and the eligible group. PEM 210 (July 2007), p. 1. The program group means those persons living together whose income and assets must be counted in determining eligibility for assistance. PEM 210, p. 1. When assistance is requested for a dependent child, each of the following who live together must be in the program group: child; and child's parents. PEM 212, p. 3.

In this case, the Department alleges that Respondent committed an IPV of her FAP/FIP benefits because she failed to report that she resided with the alleged father of her children and that he had employment and wages to the Department, which caused an overissuance of FAP/FIP benefits. Also, the Department indicated that Respondent's household size was three from [REDACTED] and then increased to four from [REDACTED] (Respondent gave birth to a child). See Exhibit A, p. 1.

First, the Department presented a residential lease agreement received on [REDACTED] [REDACTED]. See Exhibit A, pp. 10-12. The lease agreement stated that the residence would be occupied by Respondent, the alleged father, and the two children from [REDACTED]. See Exhibit A, pp. 10-12. The alleged father initialed and dated the lease agreement to agree to the terms and conditions on or around [REDACTED] [REDACTED]. See Exhibit A, p. 11. Respondent indicated that the initial occurred on [REDACTED] however, a review of the form appears to show it was dated by the alleged father on [REDACTED]. See Exhibit A, p. 11.

Second, the Department presented Respondent's application dated [REDACTED] in which she did not report that she is living with the alleged father of her children and that he is employed. See Exhibit A, pp. 13-20. It should be noted that Respondent did report the same residence in the application as compared to the lease agreement. See Exhibit A, p. 13. It should further be noted that under the application notes section it appears to indicate that the alleged father got the apartment for Respondent and the children in his name for them. See Exhibit A, p. 20.

Third, the Department presented the alleged father's employment verification, which was current as of [REDACTED]. See Exhibit A, pp. 21-24. The alleged father's employment verification indicated that he received wages throughout the alleged fraud period. See Exhibit A, p. 23.

At the hearing, Respondent testified that she recently married the alleged father (hereinafter referred to as “the spouse”) and the spouse never resided with her and the children during the alleged fraud period. On or around January 2007, Respondent testified that the spouse left the home and went to live with another individual. Respondent testified that it was only approximately two months ago in which the Respondent/spouse began residing with one another again.

Additionally, Respondent testified that she and her children were evicted from the apartment complex. An issue also arose during the hearing because if the spouse had left the apartment in January 2007, then why did he initial the lease agreement after his alleged departure? See Exhibit A, p. 11. In response, Respondent testified that the spouse initialed the lease agreement because he did not want the Respondent/children to be homeless. Finally, Respondent testified that the spouse pays child support to all three children.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of her FAP/FIP benefits. There was no evidence to show that Respondent, during the alleged fraud period, intentionally withheld information for the purpose of maintaining Michigan FAP/FIP eligibility. The Department presented Respondent’s application and lease agreement; however, this was before the alleged fraud period. Yes, the lease agreement indicated that the spouse/Respondent/children were to reside with one another from [REDACTED]. See Exhibit A, p. 11. However, the lease agreement occurred two months prior to the application date and it is quite possible that the spouse had left the home by the time of the application/alleged fraud period. As stated above, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld the group composition/the spouse’s earned income information for the purpose of maintaining Michigan FAP/FIP eligibility. As such, in the absence of any clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining Michigan FAP/FIP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/FIP 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/FIP benefits. Therefore, Respondent is not disqualified from FAP/FIP 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. 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 (July 2014), p. 6.

As stated previously, the Department failed to show that Respondent committed an IPV of her FAP/FIP benefits. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI 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, p. 1.

Nonetheless, a client error is not present in this situation. The Department has failed to satisfy its burden of showing that Respondent did receive a FAP/FIP OI in the amount of \$10,380 for the period of [REDACTED]. See Exhibit A, p. 4. As stated in the previous analysis, the Department failed to establish that the spouse was a group member of the household; therefore, the Department does not consider his income when determining the group's eligibility. See PEM 210, p. 1; PEM 212, pp. 1 and 7; PEM 515 (July 2007), p. 1 (The program group means those persons living together whose income and assets must be counted in determining eligibility for assistance); and PEM 550 (January 2007), p. 2. (do not budget the income of a non-group member). Therefore, the Department cannot seek recoupment of Respondent's FAP/FIP benefits and the Department is ordered to delete and cease any recoupment action. See BAM 700, p. 1 and BAM 715, p. 7.

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 \$10,380 from the FIP and FAP programs.

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



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

Date Signed: **8/17/2015**

Date Mailed: **8/17/2015**

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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:

