

2. The Department has previously established the OI and a debt in this case in the amount of \$1,947.00 and had begun collection and recoupment of the OI at the time of the hearing. This matter seeks an adjudication of whether an IPV occurred and whether Respondent should be disqualified.
3. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
4. Respondent was a recipient of FAP benefits issued by the Department for the period beginning December 2015 through December 31, 2016. Exhibit A, p. 95.
5. Respondent was aware of the responsibility to report household changes in income and reporting starting employment. Exhibit A, pp. 8-54.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2016 through December 31, 2016 (fraud period).
8. During the fraud period a household member, [REDACTED], was working and receiving income and beginning work on July 29, 2016, and ending February 7, 2017. Exhibit A, 55-71.
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 United States Postal Service 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 2018), pp. 12-13; ASM 165 (August 2016)

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 (October 2018), p. 8; 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, or committed any act constituting a violation of the Supplement Nutritional Assistance Program (SNAP) regulations or State Statutes for the purpose of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); see also 7 CFR 273.16(c) and(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.

In this case, the Department asserts that Respondent intentionally failed to report income of [REDACTED] who was listed as living in the Respondent's home at the time of her December 23, 2015 application. Exhibit A, p. 13. The Department alleged that the employment income was not reported to the Department in order to maintain her FAP benefits. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 556 (July 2013), pp. 1-6; 7 CFR 273.9(a). FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (October 2016), p. 11; 7 CFR 273.10(b)(1)(i).

On July 29, 2016, [REDACTED] a member of Respondent's household, began employment with [REDACTED] and received his first paycheck on August 8, 2016. [REDACTED] continued to work until February 7, 2017, and received his last paycheck on February 17, 2017. Respondent did not report this employment to the Department.

The Respondent completed a second application on January 3, 2017, at which time Respondent reported household income of \$500.00 and did not report [REDACTED] in the household. On November 30, 2018, the Department requested earning information for [REDACTED] from [REDACTED], which was provided and included paystubs establishing income and earnings beginning July 29, 2016, and ending February 7, 2017, with paystubs also provided. In addition, the application noted that Respondent and her two children were listed as tax dependents claimed by [REDACTED]

In this case, at no time did Respondent report any income in the household from employment of [REDACTED] even though being notified in the first application that she was required to report changes in employment and income within 10 days of the change as the change might affect eligibility for FAP benefits and certifying that she had read and understood her Rights and Responsibilities. In addition, Respondent agreed to specifically report changes within 10 days of the change including Employment starts and stops. Exhibit A, pp. 36-37. When Respondent's household member began work on July 29, 2016, and throughout the period July 29, 2016, until her reapplication in January 2017, the Respondent never reported the income or starting of employment by [REDACTED] and continued to receive FAP benefits on the basis of no household income.

Despite receiving notification in the December 23, 2015 application of her responsibility to report changes in come and employment and her agreement to report same, Respondent failed to report the income over a period of five months while receiving this income and the FAP benefits based on no household income. At no time did Respondent report the income from [REDACTED] employment to the Department. Although the Respondent claimed that she did not live at the residence listed on the application at all times when speaking to the regulation agent assigned to her case, she did not appear at the hearing to establish in any pertinent detail that she was not living there and used the application address on her driver's license. Based upon the facts presented, the Department has established by clear and convincing evidence that Respondent intentionally withheld reporting the household income so as to continue receiving her full FAP allotment and that Respondent committed an IPV.

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, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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; 7 CFR 273.16(b)(1) and (5). 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 satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

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 established by clear and convincing evidence that Respondent committed an IPV.

IT IS ORDERED to that the Respondent be disqualified from receiving FAP benefits for a period of 12 months.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge

for Robert Gordon, Director

Department of Health and Human Services

