

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

IN THE MATTER OF:



Reg. No.: 2013-32700
Issue No.: 3052
Case No.:
Hearing Date: April 24, 2013
County: Wayne (82-41)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on April 24, 2013, from Detroit, Michigan. The Department was represented by .

☐ Participants on behalf of Respondent included: .

☒ 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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC) |
| <input type="checkbox"/> Medical Assistance (MA) | |

benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC)? |

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 March 7, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG ☒ has ☐ has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits during the relevant periods at issue.
4. Respondent ☒ was ☐ was not aware of the responsibility to report changes in residency to the Department.
5. Respondent had no 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 they are considering the fraud period is March 10, 2010, through July 14, 2010 (the fraud period).
7. During the alleged fraud period, the Department alleges that Respondent received an OI in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits in the amount of \$1,000.46.
8. This was Respondent's ☒ first ☐ second ☐ third alleged IPV.
9. A notice of hearing was mailed to Respondent at the last known address and ☒ was ☐ was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP

pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

Subsequent to the scheduling of the current hearing and prior to the hearing date, the Notice of Hearing and accompanying documents (which established due notice) were mailed to Respondent via first class mail at the last known address and were returned by the United States Postal Service as undeliverable. Department policy dictates that when correspondence sent to Respondent concerning an IPV is returned as undeliverable, the hearing cannot proceed with respect to any program other than FAP. BAM 720, p. 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount is \$1000 or more, or
- the total OI amount is less than \$1000, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance, or
 - the alleged fraud is committed by a state/government employee.

BEM 720 (February 1, 2013 and October 1, 2009), p. 10.

Suspected IPV means (i) a client is alleged to have trafficked FAP benefits or (ii) 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 their reporting responsibilities.

BAM 720, p. 1 (emphasis in original).

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). 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 alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive his Michigan-issued FAP benefits and use those benefits out of state. The Department alleged an OI of \$1,000.46 resulting from Respondent's use of his Michigan-issued FAP benefits in New Hampshire between March 10, 2010, and July 14, 2010. At the hearing, after a discussion concerning the client reporting period, the standard of promptness for change processing, and the negative action suspension period, the Department stipulated to removal of Respondent's \$200 March 2010 FAP issuance from the OI amount. Removal of this amount would reduce the OI sought to \$800.46. This OI is less than the \$1,000 threshold for IPV's. Thus, the IPV, and any resulting program disqualification if an IPV is established, cannot be pursued against Respondent.

However, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (February 1, 2013), p. 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (February 1, 2013), pp. 1, 5; BAM 705 (February 1, 2013), p. 5.

At the hearing, the Department established that \$1,071 in FAP benefits were issued by the State of Michigan to Respondent from February 19, 2010, through July 31, 2010, and that, between March 10, 2010, and July 14, 2010, Respondent used \$1,000.46 in FAP benefits issued by the State of Michigan out of state. Respondent's out-of-state use established that he was no longer a Michigan resident and, therefore, not eligible for FAP benefits. BEM 220 (July 1, 2009), p. 1. Removing the \$200 FAP issuance to Respondent for March 2010 as stipulated by the Department reduces the Department's recoupment to \$800.46. Thus, the Department is entitled to recoup the \$800.46 in FAP benefits it issued to Respondent for the fraud period between March 2010 and July 2010.

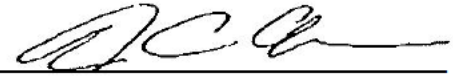
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The IPV action is dismissed.
2. Respondent ☒ did ☐ did not receive an OI of program benefits in the amount of \$800.46 from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

The Department is ORDERED to

- ☐ delete the OI and cease any recoupment action.
- ☐ initiate recoupment procedures for the amount of \$ in accordance with Department policy.
- ☒ reduce the OI to \$800.46 for the period between March 2010 and July 2010, in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 1, 2013

Date Mailed: May 2, 2013

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

ACE/pf

cc:

