

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20134667
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: February 20, 2013
County: Macomb County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 February 20, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). Respondent appeared and provided testimony.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (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 October 18, 2012 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 during the period of March 1, 2011 through August 31, 2011.

4. Respondent was aware of the responsibility to timely and accurately report to the Department when his monthly gross income exceeded \$ [REDACTED]
5. Respondent had no apparent physical or mental impairment that would limit his 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 1, 2011 through August 31, 2011.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
8. Respondent was entitled to \$ [REDACTED] in FAP during this time period.
9. Respondent did receive an OI in the amount of \$ [REDACTED] under the FAP program.
10. The Department has established that Respondent committed an IPV.
11. This was Respondent's first IPV.
12. A notice of disqualification 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 1999 AC, Rule 400.3001 through Rule 400.3015.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700.

According to BAM 720, "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 their reporting responsibilities.

An IPV is suspected when there is 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.

The Department's OIG requests IPV hearings for cases when:

- FAP trafficking OIs are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance 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 (see BEM 222), **or**
 - The alleged fraud is committed by a state/government employee. BAM 720.

With regard to FAP cases only, an IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 720.

The Department will disqualify an active **or** inactive recipient who:

- Is found by a court or hearing decision to have committed IPV, **or**
- Has signed a Request for Waiver of Disqualification Hearing (DHS-826) or Disqualification Consent Agreement (DHS-830), **or**
- Is convicted of concurrent receipt of assistance by a court, **or**
- For FAP, is found by SOAHR or a court to have trafficked FAP benefits. BAM 720.

A disqualified recipient remains a member of an active group as long as he lives with them. BAM 720. Other eligible group members may continue to receive benefits. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720. If the court does not address disqualification in its order, the standard period applies. BAM 720. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are generally required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105.

Food assistance groups with countable earnings, as currently defined in the BEM 500 series, are assigned to the simplified reporting (SR) category. BAM 200. This reporting option increases FAP participation by employed households and provides workload relief. BAM 200. Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200.

In the instant matter, Respondent does not dispute that he was a "simplified reporter" as defined by BAM 200. In other words, Respondent was required to report to the Department when his gross monthly household income exceeded \$ [REDACTED]. Respondent also does challenge that his income exceeded the SR \$ [REDACTED] reporting limit during the months of March, 2011 through August, 2011. Respondent contends that he is not guilty of an IPV because he has good moral character and is an upstanding citizen. (It should also be noted that during the hearing, Respondent testified, under oath, that he would repay the Department for any OI.) While this Administrative Law Judge has no reason to believe that Respondent is a nefarious person, the Department has established that Respondent was aware of the responsibility to report when his income exceeded the SR reporting amount. The evidence also shows that Respondent does not have any apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. During the fraud period, Respondent continued to receive FAP benefits despite the fact that his household income had increased above the SR limit.

Respondent's signature on the Assistance Applications from December 20, 2009, certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP programs, resulting in a \$ [REDACTED] overissuance from March, 2011 through August, 2011. This is Respondent's first FAP IPV. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that:

1. Respondent did commit an IPV.
2. Respondent did receive an overissuance of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

IT IS SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 25, 2013

Date Mailed: February 25, 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.

CAP/cr

cc:

[REDACTED]