

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

IN THE MATTER OF:

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Reg. No.: 2013-68558
Issue No(s): 1000; 3052
Case No.: ██████████
Hearing Date: November 18, 2013
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on November 18, 2013 from Detroit, Michigan. The Department was represented by ██████████, Lead Agent of the Office of Inspector General (OIG).

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 400.3178(5).

ISSUES

1. Did Respondent receive proper Notice of Disqualification Hearing with respect to the Family Independence Program (FIP)?
2. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving 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 September 13, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent has very limited command of the English language. (Exhibit 1, p. 9).
5. Respondent applied for FAP benefits on August 15, 2012 (Exhibit 1) and used her Bridge card in Michigan until October 5, 2012. (Exhibit 2, p. 10)
6. Respondent used her Bridge card exclusively in the [REDACTED] from October 12, 2012 through July 3, 2013. (Exhibit 2, pp. 10-12)
7. A notice of hearing was mailed to Respondent regarding FAP only at the last known address and was not returned by the US Post Office as undeliverable.

FIP

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

A client must be notified of the IPV hearing, per BAM 720, p. 18.

In the present case, Respondent was not notified of the IPV hearing with respect to FIP. Therefore, the request for hearing regarding FIP is dismissed without prejudice.

FAP

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

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 for the FIP, SDA, CDC, MA and FAP programs 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 (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720, p. 10.

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, p. 6; 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.

In this case, Respondent has very limited command of the English language, per Department specialist notations. (Exhibit 1, p.9) The Department has not, therefore, proven by clear and convincing evidence one of the elements of an IPV, that is, that Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill reporting responsibilities.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710, p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has not proven by clear and convincing evidence that Respondent committed an IPV, so Respondent is not disqualified from receiving program benefits.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

BEM 220 instructs that to be eligible for assistance in Michigan, a person must be a Michigan resident. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. (It is noted that the Department cited BEM 212 regarding temporary absences, but BEM 212 addresses who must be included in FAP groups; it does not address residency.)

In this case, Respondent applied for FAP on August 15, 2012 (Exhibit 1) and used her Bridge card in Michigan until October 5, 2012. Respondent used her Bridge card exclusively in the [REDACTED] from October 12, 2012 through July 3, 2013. (Exhibit 2, pp. 10-12) The Department did not offer any additional evidence that Respondent is no longer a resident of Michigan, such as an application for food assistance in Georgia, or other proof of residency in [REDACTED]. The Department therefore has not proven that Respondent received an OI due to no longer being a resident of Michigan.

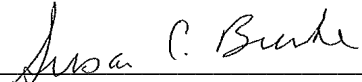
DECISION AND ORDER

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. Respondent did not commit an IPV by clear and convincing evidence.
2. Respondent did not receive an OI of program benefits.

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

It is further ORDERED that the hearing request regarding FIP is DISMISSED without prejudice.



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 26, 2013

Date Mailed: November 26, 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.

SCB/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]