

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

IN THE MATTER OF:

██████████
████████████████████
████████████████

Reg. No.: 2013-59590
Issue No.: 2000; 3005
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 ██████████, Regulation 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 Medical Assistance (MA)?
2. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Did Respondent commit an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving 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 July 26, 2013, to establish an OI of benefits for MA and FAP 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 was clearly and correctly instructed regarding his reporting responsibilities.
5. Respondent did not report that he received income.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The fraud period is [REDACTED].
8. During the fraud period, Respondent was issued [REDACTED] benefits by the State of Michigan, and Respondent was entitled to [REDACTED]0 in such benefits during this time period.
9. Respondent received an OI in FAP benefits in the amount of [REDACTED].
10. This was Respondent's first IPV.
11. 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.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105

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 MA. Therefore, the request for hearing regarding MA is dismissed without prejudice.

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.

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. 12.

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.

The Department has presented clear and convincing evidence that Respondent committed an IPV. Respondent signed an application/re-determination on September 28, 2013 (Exhibit 1, pp. 17-24), on October 8, 2010 (Exhibit 1, pp. 26-33), on September 9, 2011 (Exhibit 1, pp. 34-39) on February 7, 2012 (Exhibit 1, pp. 40-41) and on August 8, 2012 (Exhibit 1, pp. 42-45) Official Notice is taken that with Respondent's signature on the assistance application, redetermination or semi-annual contact report, Respondent certified receipt, review and agreement with the sections in the assistance application Information Booklet, which include the obligation to report changes in one's circumstances. It is logical to conclude that Respondent was clearly and correctly instructed regarding his reporting responsibilities.

Respondent has no apparent physical or mental impairment that limits his understanding or ability to fulfill reporting responsibilities.

Respondent did not report his income from Professional Education Services during the fraud period, as required, and it is logical to conclude that he intentionally withheld this information for the purpose of maintaining program benefits. See also Respondent's admission to OIG Agent that he did not report the income because he did not want it to interfere with his benefits. (Exhibit 1, p. 12)

A court or hearing decision that finds a client committed an 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, Respondent is disqualified from receiving FAP for a period of one year.

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.

In this case, Respondent received an OI in the amount of \$2,115.00 in FAP benefits. (See Exhibit 1, pp. 66-102.)

DECISION AND ORDER

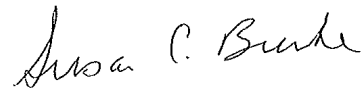
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. Respondent committed an IPV.
2. Respondent received an OI of program benefits in the amount of \$2,115.00 from the following program(s): 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 [REDACTED]

It is FURTHER ORDERED that the Department's hearing request regarding MA is DISMISSED without prejudice.



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

Date Signed: December 17, 2013

Date Mailed: December 17, 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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]