

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-59073
Issue No(s): 3005
Case No.: ██████████
Hearing Date: November 18, 2013
County: Wayne (35)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 three way 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).

☒ Participants on behalf of Respondent included: Respondent, Anthony Michael.

ISSUES

1. Did Respondent receive an overissuance (OI) of
☐ Family Independence Program (FIP) ☐ State Disability Assistance (SDA)
☒ Food Assistance Program (FAP) ☐ Child Development and Care (CDC)
☐ Medical Assistance (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
☐ Family Independence Program (FIP)? ☐ State Disability Assistance (SDA)?
☒ Food Assistance Program (FAP)? ☐ 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 July 24, 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 issued by the Department.
4. Respondent ☒ was ☐ was not aware that the trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
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 it is considering the fraud period is [REDACTED] (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued [REDACTED] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits by the State of Michigan, and the Department alleges that Respondent trafficked [REDACTED] in FAP benefits during the fraud period.
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), 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 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 (July 2013), 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 (July 2013), 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, the Department alleged that Respondent committed an IPV because (i) he failed to report his imprisonment; and (ii) he trafficked his FAP benefits.

At the hearing, the Department established that Respondent was incarcerated from [REDACTED]. Department testified that Respondent did not report his imprisonment to the Department, and that FAP benefits continued to be issued to him and accessed until [REDACTED]. Respondent confirmed that he was incarcerated during that time period and stated that when he was arrested, he instructed his friend to call the Department to inform them of his incarceration. While Respondent was not eligible for FAP benefits while he was imprisoned, the foregoing evidence does not provide clear and convincing evidence that Respondent committed an IPV. The Department did not present any evidence that Respondent was aware that he continued to be issued FAP benefits while he was imprisoned or that he was aware that someone was continuing to access and use his FAP benefits while he was imprisoned. Therefore, there was no clear and convincing evidence that Respondent withheld information concerning his imprisonment for the purpose of maintaining his FAP eligibility. Thus, the Department has failed to establish that Respondent committed an IPV of his FAP benefits issued to him while he was incarcerated.

The Department also sought to establish that Respondent trafficked his FAP benefits by allowing unauthorized use of his FAP benefits while he was imprisoned.

Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2013), p 65. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (June 2013), p 2.

In this case, the Department testified that during the time period for which Respondent was incarcerated, Respondent allowed all of his FAP benefits to be used by an ineligible non-member of his household group. In support of its case, the Department presented Respondent's FAP transaction history showing that purchases were made using Respondent's EBT card during the time he was incarcerated. Additionally, the Department relied on statements made by Respondent during an interview in which he indicated that he had previously given his pin number to his [REDACTED] and allowed her to

use his FAP benefits as evidence to establish that Respondent trafficked his benefits by fraudulently transferring them. At the hearing, Respondent confirmed that at a certain time, he gave his [REDACTED] the pin number to his card and that she purchased food items for Respondent, but never for herself. Respondent testified that at the time of his arrest, all of his belongings including his EBT card, health insurance card, social security card and identification were left at his home where anyone could access them. Respondent stated that he had no way of knowing that his FAP card was being used while he was incarcerated.

The unauthorized use by a third party of Respondent's FAP benefits during his imprisonment is insufficient to establish by clear and convincing evidence that Respondent sold his FAP benefits for cash or consideration other than eligible food or that he fraudulently transferred his FAP benefits. Thus, the Department did not establish that Respondent committed an IPV concerning his FAP benefits based on trafficking.

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 (July 2013), 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 satisfied its burden of showing that Respondent committed an IPV by trafficking his FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

Overissuance

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

Respondent was not eligible for FAP benefits while he was incarcerated between [REDACTED] [REDACTED] BEM 265 (October 2013), p.2. At the hearing, the Department established that the State of Michigan issued a total [REDACTED] in FAP benefits from [REDACTED] and that all of the benefits were used. Therefore, the Department has established it is entitled to recoup the [REDACTED] in FAP benefits it issued to Respondent between [REDACTED].

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 ☒ did not commit an IPV by clear and convincing evidence.
2. Respondent ☒ did ☐ did not receive an OI of program benefits in the amount of [REDACTED] from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

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



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 7, 2014

Date Mailed: January 7, 2014

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.

ZB/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]