

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

IN THE MATTER OF:

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

Reg. No.: 2013-68549
Issue No(s): 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 an overissuance (OI) of Food Assistance Program (FAP) 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 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 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 applied for FAP benefits on September 24, 2012.
4. Respondent received FAP benefits.
5. Respondent used his Bridge card exclusively in the [REDACTED] from November 30, 2012 through July 5, 2013. (Exhibit 1, pp. 39, 40)
6. In November of 2012, Claimant was called to [REDACTED] for a family emergency and after a brief trip back to Michigan, returned to [REDACTED]. (Exhibit 1, p. 47)
7. Respondent had a record of living in Bakersfield, CA. (Exhibit 1, p. 31)
8. A notice of hearing was mailed to Respondent at the last known address in [REDACTED] 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 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 applied for FAP benefits on September 24, 2012. Respondent received FAP benefits. Respondent used his Bridge card exclusively in the State of ██████████ November 30, 2012 through July 5, 2013. (Exhibit 1, pp. 39, 40) Respondent had a record of living in ██████████. (Exhibit 1, p. 31) A notice of

hearing was mailed to Respondent at the last known address in [REDACTED] and was not returned by the US Post Office as undeliverable.

Based on the time frame that Respondent received FAP benefits exclusively in the State of [REDACTED] it is not concluded that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. In addition, an e-mail from Respondent indicates that in November of 2012 he was called to [REDACTED] for a family emergency and used the card in [REDACTED] a. Respondent stated credibly that he had no intention of "taking anything from anyone." (Exhibit 1, p. 47)

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.

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, the Department has shown that Respondent received FAP benefits exclusively outside of the State of Michigan, that Respondent had a California address, and that the Notice of Hearing mailed to Respondent in California was not shown to be undeliverable. Respondent also acknowledged that after being called to California for a family emergency, he made only a brief visit to Michigan and then returned to California to stay with his mother. It is logical to conclude that Respondent was not a resident of Michigan for a period of time that he received FAP benefits exclusively in the State of

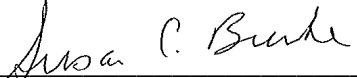
California. As a non-resident of Michigan, Respondent received an OI of benefits in the amount of \$1,400.00. (Exhibit 1, p. 41)

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 received an OI of program benefits in the amount of [REDACTED]

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



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

Date Signed: December 17, 2013

Date Mailed: December 19, 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]