

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

IN THE MATTER OF:



Reg. No.: 2014-9264
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: February 18, 2014
County: Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 February 18, 2014 from Lansing, Michigan. The Department was represented by [REDACTED] 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 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 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 November 1, 2013, 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 issued by the Department.
4. Respondent was not aware of the responsibility to report any household changes, including changes with residence, to the Department.
5. Respondent had apparent physical or mental impairments 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 October 2012 through November 2012 (fraud period).
7. During the fraud period, Respondent was issued \$[REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$[REDACTED].
9. This was Respondent's first alleged IPV.
10. A notice of 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 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 (7-1-2013), 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 (7-1-2013), p. 7; 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 CF R 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 alleges the Respondent trafficked FAP benefits because the FAP benefits were used while Respondent was incarcerated. However, FAP trafficking has a very specific definition. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food; selling products purchased

with FAP benefits for cash or consideration other than eligible food; or purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p. 2. The Department has not provided any evidence that the Respondent's FAP benefits were bought or sold for cash or other consideration, only that the FAP benefits were used while the Respondent was incarcerated. Accordingly, the Department has not established the Respondent committed and IPV based on FAP trafficking.

The Department has also not established that Respondent was aware of the responsibility to timely and accurately report to the Department all household changes, including changes residence. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days. BAM 105 (9/1/2012). In this case, Respondent's signature on the Assistance Application cannot certify that he was aware of the change reporting responsibilities because Respondent had apparent physical or mental impairments that would limit the understanding or ability to fulfill this requirement. On the assistance application the Respondent indicated: he attended special education classes when he was in school; he is disabled based on depression; he receives Social Security disability benefits; he has a Guardian; and he wanted the Guardian to be authorized to access the food benefits to shop for him. (Exhibit A, pp. 14 and 22-23) Accordingly, the Department has not established the Respondent committed an IPV by clear and convincing evidence.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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 (7-1-2013), 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 evidence of record does not establish that Respondent committed his first FAP IPV. Therefore, no 12 month disqualification should be applied.

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.

In this case, it was documented on the assistance application that the other person in the home, the Respondent's mother/Guardian prepares and purchased food separately from the Respondent. (Exhibit A, pp. 9-24) Pursuant to BEM 212 (4-1-2012), the FAP benefits would have been issued solely for the Respondent.

The documentation submitted by the Department establishes: the Respondent was incarcerated from October 6, 2012 through June 2, 2013; the Respondent received \$ [REDACTED] total in FAP benefits for the months of October and November 2012; and all \$ [REDACTED] of the FAP benefits were used between October 19, 2012 and November 21, 2012. (Exhibit A, pp. 27-35) The Respondent was not eligible for FAP benefits when he was incarcerated because he was a resident of an institution that would have provided the majority of his meals as a part of its normal services. (See BEM 212 p. 6)

The evidence of record establishes that the Respondent received an OI of FAP benefits during the above-mentioned fraud period in the amount of \$ [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. The Department has not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$400 in accordance with Department policy.

Colleen Lack

Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 25, 2014

Date Mailed: February 25, 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.

CL/hj

cc:

[REDACTED]

