

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

IN THE MATTER OF:



Reg. No.: 2014-3691
Issue No(s): 3005
Case No.:
Hearing Date: February 11, 2014
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 11, 2014 from Lansing, 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 an over-issuance (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 October 4, 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 the Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of her rights and responsibilities as evidenced on her signature on the DHS-1171, Assistance Application dated November 5, 2012.
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 July 1, 2012-April 30, 2013.
7. During the fraud period, the Department's OIG alleges Respondent was [REDACTED] and that Respondent's [REDACTED] used the Respondent's FAP benefits and that the Respondent therefore trafficked in FAP benefits.
8. The Respondent's [REDACTED] is not a member of her household for FAP purposes.
9. On November 19, 2012, the Respondent filed a [REDACTED] with the [REDACTED] [REDACTED] in which she reported that her [REDACTED] had stolen her FAP card.
10. 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 \$ [REDACTED] in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
12. This was Respondent's first alleged IPV.
13. 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 Bridges Administrative Manuals (BAM), Department of Human Services Bridges Eligibility Manual (BEM), 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 \$ [REDACTED] or more, or
 - the total OI amount is less than \$ [REDACTED] **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 (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 (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 OIG is alleging that the fraud period is from July 2012-April 2013. However, the Respondent was [REDACTED]. After the Respondent was released on [REDACTED] he then filed a [REDACTED] report indicating that her FAP card was [REDACTED] on [REDACTED]. Subsequent to that and between [REDACTED] the Respondent was again [REDACTED]. The RA at the hearing testified that the Respondent's FAP card was reported stolen before the Respondent was charged with an IPV. The RA at the hearing was asked about the outcome of the [REDACTED], specifically, whether or not the Respondent's [REDACTED] was charged and/or [REDACTED] of any crime resulting from the Respondent's [REDACTED]. The RA did not know. The RA questioned why it was that the Respondent's [REDACTED] would have the Respondent's [REDACTED] to the Respondent's FAP card, inferring that the Respondent somehow provided her [REDACTED] with [REDACTED]. This inference was not persuasive to this Administrative Law Judge, as it is completely possible that the [REDACTED] could have been written down and stolen along with the FAP card.

The RA also testified that the Respondent is not entitled to FAP benefits while incarcerated. While that may be true, that is not the allegation brought forth in the hearing summary. Furthermore, there is no evidence to indicate that the Respondent intended to use the benefits she received while she was [REDACTED]. Also, this Administrative Law Judge takes official notice that while [REDACTED] telephone access for a [REDACTED] is not necessarily easy and can be very expensive. Obviously, if the Respondent was availing herself of FAP benefits, she may not have the funds to telephone the Department to report that she is [REDACTED]. When she was released, she did report that her benefits had been stolen. As such, the evidence is insufficient to establish that the Respondent committed an IPV.

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 (2012), 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. As the Administrative Law Judge has already determined that the Respondent not commit an IPV, no disqualification shall be imposed.

Over-issuance

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. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.* For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (2012), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

Establishing whether DHS or Respondent was at fault for the OI is of no importance to the collectability of over-issued FAP benefits because DHS may collect the OI in either scenario. Determining which party is at fault may affect the OI period. There is insufficient evidence that Respondent is at fault for the OI, as the Respondent asserts that the bridge card was stolen. The Administrative Law Judge therefore concludes that the evidence indicates that the fault for the OI lies with the Respondent's [REDACTED]. Regardless, when the Respondent receives an OI the Department policy requires that the Department take action to recoup the OI.

The amount of the OI is affected by the full standard of promptness (SOP) for change processing and the negative action period. BAM 705 (2012), pp. 4-5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.* For non-income changes, DHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. *Id.*

DHS alleged that FAP benefits were over-issued to Respondent over the period of July 1, 2012 to April 30, 2013 due to Respondent's [REDACTED]. However, the Respondent was released from [REDACTED]. She was not again [REDACTED] until [REDACTED]. The Respondent is ineligible for benefits while [REDACTED]. Yet, the Respondent was not [REDACTED] during the months of November and December 2013, and the months of January and February and half of the month of March. During the month in which of the Respondent is not [REDACTED] she remains otherwise eligible for benefits. Therefore, the Administrative Law Judge concludes that the OI period is not accurate, and likely should be two separate OI periods.

A close review of the record, specifically the EBT history in evidence, establishes that the OIG calculated the FAP benefits used for only those times in which the Respondent was [REDACTED]. The amounts of FAP benefits used between October 31, 2012 and March 12, 2013, the time in which the Respondent would be otherwise eligible for FAP

benefits, were not included in the OI amount. As such, the Administrative Law Judge concludes that the OIG did properly calculate the OI amount to be \$ [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 established by clear and convincing evidence that Respondent did not commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program FAP.

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

Susanne E. Harris

Susanne E. Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/28/14

Date Mailed: 3/3/14

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.

SEH/tb

cc:

[REDACTED]