

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

IN THE MATTER OF:



Reg. No.: 2014-16070
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: March 20, 2014
County: Oakland County DHS #4

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 March 20, 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 December 9, 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 made aware of the responsibilities to completely and truthfully answer all questions on forms and in interviews as well as to report all household changes, which includes changes in residency.
5. Respondent had an 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 June 15, 2010 to September 30, 2010 and December 1, 2012 to June 30, 2013 (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 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 CFR 273.16(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 record contained documentation the Claimant was issued FAP benefits in both Michigan and Wisconsin during the periods of June 2010 through September 2010 and December 2012 through September 2013. (Exhibit A, pages 76-84) It is also noted that the Electronic Benefit Transfer (EBT) History of FAP purchases shows

Respondent utilized the Michigan issued FAP benefits out of state for 30 (thirty) days or more during part of the fraud period. From January 2013 through March 2013, all purchases were in Wisconsin, in April and May 2013 all purchases were in Illinois, and in June and July 2013 all purchases were in Minnesota. (Exhibit A, pages 88-89)

Department policy requires clients to completely and truthfully answer all questions on forms and in interviews. Department policy also requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days. BAM 105 (1-1-2010). The Department has established that Respondent was made aware of the responsibilities to completely and truthfully answer all questions on forms and in interviews as well as to report all household changes, which includes changes in residency. Respondent's signatures on the June 15, 2010, February 8, 2011, and November 9, 2012 Assistance Applications in this record certify that Department informed Respondent of the reporting responsibilities and that fraudulent participation in FAP could result in criminal or civil or administrative claims. The evidence does not establish that the information Respondent provided on the applications was complete and truthful nor that Respondent timely reported changes in residency to the Department within 10 days as required per policy.

However, the non-electronic Assistance Applications also indicate Respondent had an apparent physical or mental impairment that limits his understanding or ability to fulfill these responsibilities. Specifically, on the June 15, 2013 Assistance Application, Claimant indicated he had a learning impairment. Further, it appears Respondent had some trouble understanding and completing the portion of the application addressing whether anyone assisted him to complete the application. While the corrected check box markings indicate no one assisted Respondent to complete the application, Respondent then listed himself as the person that provided the assistance. (Exhibit A, pages 17 and 25) On the February 8, 2011 application, no learning impairment was listed, but it appears Respondent again had some trouble understanding and completing the portion of the application addressing whether anyone assisted him to complete the application. The check boxes are marked no indicating no one assisted Respondent with completing the application, Respondent was again listed as the person that provided the assistance, yet on this application the relationship box for relative is marked with mother written in and Respondent's mother also signed the application. (Exhibit A, pages 27-45) This evidence indicating Respondent had an impairment that affected his ability to understand and accurately complete the non-electronic Assistance Applications also indicates an impairment that would limit his understanding or ability to fulfill the reporting responsibilities under BAM 105. Accordingly, there has not been clear and convincing evidence presented that the Respondent intentionally 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. 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, there can be no disqualification because there was not clear and convincing evidence presented that the Respondent intentionally committed an IPV

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, the evidence was sufficient to establish the alleged OI. The record contained documentation the Claimant was issued FAP benefits in both Michigan and Wisconsin during the months of June 2010 through September 2010 and December 2012 through September 2013. (Exhibit A, pages 76-84) It is also noted that the Electronic Benefit Transfer (EBT) History of FAP purchases shows Respondent utilized the Michigan issued FAP benefits out of state for 30 (thirty) days or more during part of the fraud period. All of the documented purchases in 2013 were out of state. From January 2013 through March 2013, all purchases were in Wisconsin, in April and May 2013 all purchases were in Illinois, and in June and July 2013 all purchases were in Minnesota. (Exhibit A, pages 88-89)

The fraud period for the Michigan FAP benefits is June 15, 2010 through September 30, 2010 and December 1, 2012 through June 30, 2013. During the fraud period, Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] (Exhibit A, pages 81-84)

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 intentionally committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program that the Department is entitled to recoup.

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

It is FURTHER ORDERED that any disqualification sanction related to this alleged FAP IPV be removed.



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

Date Signed: March 31, 2014

Date Mailed: March 31, 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:

