

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

IN THE MATTER OF:

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

Reg. No.: 2014-32828
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 12, 2014
County: Genesee (25-06)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 June 12, 2014, from Detroit, Michigan. The Department was represented by ██████████
████████████████████ 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP benefits?

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 March 26, 2014, 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 aware of the responsibility to report income.
5. Respondent did not have 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 (i) November 1, 2011, to March 31, 2012, and (ii) December 1, 2012, to March 31, 2013.
7. During the fraud period, the Department alleges that Respondent was issued \$1,800 in FAP benefits by the State of Michigan and was entitled to \$296 in such benefits.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,504.
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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; 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 (May 2014), pp. 12-13.

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 (May 2014), 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(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 that Respondent committed an IPV concerning his FAP benefits because he intentionally failed to report his employment income. Respondent was employed at ██████ (Employer 1) from September 29, 2011, to January 16, 2012, at ██████ (Employer 2) from January 16, 2012, to April 19, 2012, and at ██████ (Employer 3) from October 11, 2012, to March 31, 2013. The Department testified that Respondent never reported his employment and his employment with Employer 2 was discovered only after a quarterly match with the Michigan Department of Treasury. See BAM 807 (April 2012), p. 1. The Department noted that Respondent was sent a New Hire Client Notice on March 12, 2012, requesting information concerning that employment, but he did not respond and his FAP case closed effective March 31, 2013. When Respondent reapplied for benefits on May 1, 2012, he reported a loss of employment at Employer 2 but he did not report his new employment at Employer 3 five months later. Respondent was not at the hearing to challenge the Department's testimony that Respondent failed to report his income.

Respondent's failure to report his employment income, which he should have been aware would affect his FAP benefit amount and/or eligibility, establishes by clear and convincing evidence that he intentionally withheld or misrepresented information concerning his income for the purpose of maintaining or increasing FAP eligibility. Thus, the Department has established that Respondent committed an IPV of his FAP benefits.

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 established that Respondent committed an FAP IPV. Because this was Respondent's first IPV concerning the FAP program, Respondent is subject to a one-year disqualification from 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. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

In this case, the Department alleges that Respondent received an FAP OI totaling \$1,504 consisting of (i) \$752 in overissued benefits for the period between November 2011 and March 2012 when he received \$1,000 in FAP benefits but was eligible for only \$248 and (ii) \$752 in overissued benefits for the period between December 2012 and March 2013 when he received \$800 in FAP benefits but was eligible for only \$48. The Department presented a benefit issuance summary showing that Respondent received \$200 in monthly FAP benefits from November 2011 to March 2012 and from December 2012 to March 2013.

To establish the OI amount, the Department presented the original FAP budgets used to calculate Respondent's eligibility for \$200 in monthly FAP benefits for each of the months at issue with handwritten notations showing the changes to the budgets resulting when Respondent's employment income was considered in the calculation of his FAP eligibility. Each of the revised budgets was reviewed. Department policy provides that, when improper reporting or budgeting of income caused the OI, **actual income for the OI month for that income source is used**. BAM 720, p. 8. For December 2011 and March 2012, for reasons that are unclear, the Department used monthly income less than the amount Respondent actually received and, as such, the calculation was in Respondent's favor. For all months other than December 2011 and March 2012, the Department used the actual income and converted it to a standard monthly amount, which is more than the actual amount Respondent earned. BEM 505 (October 2010), pp 6-7.

A review of the FAP budgets presented shows that the Department erred in finding that Respondent was not eligible for any FAP benefits for November 2011 and March 2012. When Respondent's actual income, rather than the standard monthly amount, for those two months is considered, he was eligible for \$16 in FAP benefits for November 2011 and for March 2013. The remaining FAP budgets are properly calculated. Therefore, Respondent was eligible for \$328 of the \$1,800 in FAP benefits he was issued between November 2011 and March 2012 and between December 2012 and March 2013. Thus, the Department is entitled to recoup and/or collect from Respondent \$1,472 in overissued FAP benefits. BEM 556 (October 2011), pp. 1-6; RFT 260 (October 2011).

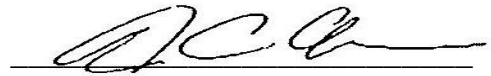
DECISION AND ORDER

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 committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$1,472 from the FAP program.

The Department is ORDERED to reduce the OI amount to \$1,472 for November 2011 to March 2012 and December 2012 to March 2013 and initiate recoupment and/or collection procedures for that amount in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 17, 2014

Date Mailed: June 17, 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.

ACE/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]