

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

IN THE MATTER OF:

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Reg. No.: 2014-33095
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 18, 2014
County: Bay (00)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 18, 2014, from Detroit, 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 overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
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 benefits for
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 April 1, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in student status.
5. Respondent had 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 October 1, 2012 to April 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,400 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,400.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 of his FAP benefits because he failed to report to the Department that he enrolled in a post-secondary education, which caused an overissuance of FAP benefits. Specifically, the Department alleges that Respondent did not meet the requirements for a person to be in student status (i.e., ineligible student) and therefore, was not eligible for FAP benefits during the time period he was enrolled.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (September 2012), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7.

For FAP cases, a person enrolled in a post-secondary education program may be in student status. BEM 245 (October 2012), p. 1. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 1.

For FAP cases, a person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

BEM 245, pp. 2-3. In order for a person in student status to be eligible, they must meet one of the criteria's listed in BEM 245. BEM 245, pp. 3-5. One of those criteria's includes being employed for at least 20 hours per week and paid for such employment. BEM 245, pp. 3-4.

Persons might live with the FAP group or applicant group who are not group members. BEM 212 (April 2012), p. 7. The Department does not consider their income and assets when determining the group's eligibility. BEM 212, p. 7. An ineligible student is a person who is in student status and does not meet the criteria in BEM 245 is a non-group member. BEM 212, pp. 7-8.

The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2012 to April 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report changes in student status and that he intentionally withheld this information for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated June 19, 2012, to show that the Respondent was aware of his responsibility to report changes. See Exhibit 1, pp. 9-32.

Second, the Department presented Respondent's college transcript received on March 11, 2014. See Exhibit 1, p 33. The transcript indicated that Respondent was enrolled in college beginning the Fall 2012 semester (8/25/12 to 12/16/12) for 13 credits. See Exhibit 1, 33. Moreover, the transcript showed that he was also enrolled through the Winter 2013 semester (1/5/13 to 4/26/13) for 10 credits. See Exhibit 1, p. 33.

Third, the Department presented a Wage History search under Respondent's name in order to show he was not employed at the time he was attending college. See Exhibit 1, p. 34. The Department also presented a FAP transaction history to show that he utilized benefits that were issued to him during the alleged fraud period. See Exhibit 1, pp. 35-38.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld information. The Department presented Respondent's application dated June 19, 2012, however, this was before the alleged fraud period. Moreover, the Department presented Respondent's transcript and Wage History, however, this evidence failed to show that Respondent intentionally withheld his student status information for the purpose of maintaining Michigan FAP eligibility.

Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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. 16. 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 has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report he was enrolled in college. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (May 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department that he was enrolled in college. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 1. Respondent did not meet all of the requirements to be in student status in order to be eligible for FAP assistance. The evidence indicated that Respondent was a person between the age of 18 through 49 and was enrolled half-time or more in college. See BEM 245, pp. 2-3 and see Exhibit 1, pp. 11 and 33. However, in order for a person in student status to be eligible, they must also meet one of the criteria's listed in BEM 245. BEM 245, pp. 3-5. One of those criteria's includes being employed for at least 20 hours per week and paid for such employment. BEM 245, pp. 3-4. The evidence presented that Respondent was not employed for at least 20 hours per week and paid for such employment during the OI period. See Exhibit 1, p. 34. Furthermore, the Department credibly testified that Respondent did not meet any of the other criteria listed in BEM 245 in order for him to be in student status. See BEM 245, pp. 3-4. Thus, Respondent did not meet the requirements for a person to be in student status (i.e., ineligible student) and therefore, was not eligible for FAP benefits during the time period he was enrolled and an OI is present in this case. See BAM 715, p. 1.

Applying the overissuance period standards and in consideration that Respondent began the Fall 2012 semester on August 25, 2012, the Department determined that the OI period began on October 1, 2012. See Exhibit 1, pp. 2 and 33. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

Additionally, 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 group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from October 2012 to April 2013, which totaled \$1,400. See Exhibit 1, p. 39. Thus, the Department is entitled to recoup \$1,400 of FAP benefits it issued to Respondent from October 1, 2012, to April 30, 2013.


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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$1,400 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,400 in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 25, 2014

Date Mailed: June 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.

EJF/cl

cc: [REDACTED]
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