

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

IN THE MATTER OF:



Reg. No.: 2014-32444
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: July 10, 2014
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 July 10, 2014, from Detroit, 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 over-issuance (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 benefits for 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 February 12, 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 changes in circumstances, such as changes in 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 May 1, 2011 to September 30, 2011 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$1000 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 \$1000.
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 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), p. 12-13.

In this case, the Department alleged that Respondent committed an IPV because he failed to report his employment and income to the Department. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. At the hearing, it was established that the Notice of Hearing was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. At the hearing, the Department established that the address it provided was the best available address for Respondent, based on a Lexis Nexis search. Thus, the hearing properly proceeded with respect to the alleged FAP 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. 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.

At the hearing, the Department alleged that Respondent was overissued FAP benefits in the amount of \$1000 from May 1, 2011 to September 30, 2011 based on a failure to report employment and income. The Department presented a benefit summary inquiry to support issuances during this time.

In calculating the OI amount, however, the Department testified that it considered Respondent's employment that began on April 4, 2011 and a first paycheck that was received on April 15, 2011. Under Department policy, the calculation of the first month of the OI requires that the Department apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7. Applying this standard and in consideration of Respondent's first paycheck received on April 15, 2011, the OI period begins June 1, 2011, thus, decreasing the Department's OI amount to \$800. Because the IPV case against Respondent does not involve a prior IPV, and the Department failed to present any evidence that this case involved the concurrent receipt of assistance, FAP trafficking, or the involvement of a state/government employee, the Department lacks authority under BAM 720 to bring this IPV case against Respondent, as the OI was less than \$1000.

Furthermore, in calculating the OI amount for an IPV based on unreported earned income, the Department is to determine the budgetable income for the period at issue by relying on the actual income earned for the overissuance month for each unreported income source. BAM 720, pp.9-10.

In this case, the Department presented a Verification of Employment (VOE) which indicated that Respondent is expected to work 40 hours per week at a rate of pay of \$17 per hour. (Exhibit 1, p. 14). The second page of the VOE where the employer was to identify Respondent's actual gross pay and the pay date is blank and "see attached" is listed. (Exhibit 1, p.15). The document attached to the original VOE that had the actual gross wages and the pay dates was not provided for review.

The Department failed to present evidence of Respondent's actual earnings for each of the months at issue and stated that in making the determination that Respondent's gross income exceeded the FAP income eligibility limit, it considered that he worked 40 hour per week and was paid \$17 per hour, which in turn, made him ineligible for any of the FAP benefits he was issued.

Because the Department has failed to establish that it properly calculated Respondent's income for OI purposes, the Department has failed to establish that Respondent was overissued FAP benefits and is therefore, not entitled to recoupment.

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 alleged that Respondent committed an IPV of his FAP benefits because he failed to report his employment and earned income to the Department. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment and earning income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (January 2011), p.7. The Department contended that Respondent's failure to report caused an OI in FAP benefits in the amount of \$1000 from May 1, 2011 to September 30, 2011.

Because, however, as discussed above, the Department has failed to establish that Respondent was over-issued FAP benefits, and because an OI is a condition of suspected IPV, the Department has failed to satisfy its burden in establishing that Respondent committed an IPV of FAP benefits by failing to report earned income.

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 failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP program.

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 IPV.
2. Respondent did not receive an OI of program benefits from the FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 23, 2014

Date Mailed: July 23, 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.

ZB/tlf

cc:

