

**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 32896
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 30, 2014
County: Calhoun (21)

ADMINISTRATIVE LAW JUDGE: Jacquelyn McClinton

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 30, 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 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 (FA) 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 31, 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 January 1, 2009 through April 30, 2009; and October 1, 2009 through January 31, 2010; and November 1, 2010 through July 31, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$5,564.00 in FAP 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 FAP benefits in the total amount of \$5,564.00.
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 (January 2009), 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 (January 2009), 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 support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on May 19, 2008, August 20, 2009, and September 13, 2010 in which Respondent acknowledged that he had received the Information Booklet advising him regarding Things You Must Do which explained reporting changes of address and reporting changes in residency. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits.

Respondent did not report that any group members were working at the time he completed the May 19, 2008 application. The Department provided no evidence that this information was false. On the August 20, 2009 application under Employment Changes (Exhibit 1 pg. 34), Respondent states that a group member began working in September 2008 and continued to work until August 14, 2009. On that same application Respondent reported that he was currently working 40 hours per week at a rate of \$7.50 per hour (Exhibit 1 pg. 35). On the September 13, 2010 application, Respondent reported that a group member was working 40 hours per week at a rate of \$9.30 per hour. The Department provided Respondent's income from January 2009 through August 2010. As previously stated, Respondent reported this income on his application. The Department also provided Respondent's income from October 16, 2011 through September 9, 2012. However, these dates are not contained within the fraud period.

The Department stated that Respondent was required but failed to report any income causing the household to exceed \$3,077.00. Although the Department stated that Respondent was sent numerous documents which alerted him of this requirement, it failed to provide a copy of any such document. The facts in this case may support a finding that it was more likely than not that Respondent was aware of the requirement to report income that exceeded the allowable amount. However, the Department must establish by clear and convincing evidence that Respondent intentionally misrepresented information for the purpose of receiving benefits. Because it is also likely that Respondent failed to read the requirement or simply forgot to report the household income once it exceeded the allowable amount, it is found that the Department did not establish by clear and convincing evidence that Respondent committed an IPV relating to his FAP benefits received during the fraud period.

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. 12

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 (January 2009), 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. 13.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under 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.

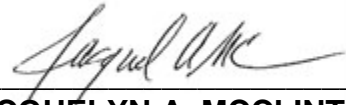
In this case, the Department stated that Respondent was required to report his income only if it exceeded a specific amount. During some of the fraud period, Department policy held that a household size of six that received more than \$3,077.00 was required to report the group income. RFT 250 (October 2008), p. 1. However, effective October 2009, the amount increased to \$3,200.00 RFT (October 2009). The Department provided evidence that during the fraud period, Respondent's household income exceeded \$3,077.00 prior to October 2009 and \$3,200.00 after October 2009. The Department further provided evidence which showed that during the fraud period, Respondent received \$5,564.00 in FAP benefits. The budgets presented by the Department revealed that during the fraud period, Respondent was not entitled to FAP benefits based upon the household income. Therefore, the Department has established that Respondent received an OI in the amount of \$5,564.00.

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 intentional program violation (IPV).
2. The Department has established that Respondent received an OI of program benefits in the amount of \$5,564.00 from the FAP program for the period of January 1, 2009 through April 30, 2009; October 1, 2009 through January 31, 2010; and November 1, 2010 through July 31, 2011.

The Department is ORDERED to initiate recoupment procedures for the amount of \$5,564.00 in accordance with Department policy.



JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 18, 2014

Date Mailed: July 18, 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.

JAM/cl

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