

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 14-001855
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 8, 2014
County: St. Joseph

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 September 8, 2014, from Detroit, Michigan. The Department was represented by [REDACTED]
[REDACTED] Participants on behalf of Respondent included Respondent.

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 April 30, 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 advised of the responsibility to accurately report household members.
5. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2012, to March 31, 2013 (fraud period).
6. During the fraud period, Respondent was issued \$1,998 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$996 in such benefits during this time period.
7. The Department alleges that Respondent received an FAP OI in the amount of \$1,002.
8. This was Respondent's first alleged FAP IPV.
9. 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 failed to timely report that his son was no longer in his

household and continued to receive FAP benefits for a group size of two. In support of its allegations, the Department presented (i) a redetermination Respondent submitted to the Department on June 20, 2012, in which he reports that he and his son are the household members and that they buy and fix food and eat meals together; (ii) a Wage Match Client Notice sent to Respondent on February 12, 2013, requesting verification of the son's employment with [REDACTED] (Employer); (iii) a documentation record completed by Respondent's worker on February 19, 2013, in which Respondent reported that his son moved out on August 15, 2012; and (iv) a benefit summary inquiry showing that FAP benefits were issued to Respondent between October 1, 2012, and March 31, 2013.

Respondent appeared at the hearing. He testified that, during the period at issue, October 2012 to March 2013, his son was 19 years old. A FAP group includes a parent and child under the age of 22 who live together. BEM 212 (April 2012 and November 2012), p. 1. For FAP purposes, living together means sharing a home where family members usually sleep. BEM 212, p. 2.

In order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." 7 CFR 273.16(e)(6); 7 CFR 273.16(c). Respondent testified that he was asked by the Department where his son slept and he explained that his son was sleeping down the street at some friends' home. However, he testified that his son continued to eat and shower at his home. Respondent explained that, because his son continued to eat at his home and he shared his food with his son, he did not believe he was doing anything wrong in failing to report that his son was no longer sleeping in his home. The Department testified that there was no evidence presented that Respondent's son had obtained his own FAP case during the period at issue. Furthermore, the evidence at the hearing established that Respondent was unable to read or write and had assistance when he completed any documentation from the Department. Therefore, it is not clear that he was aware of his reporting obligations in this case. Under the evidence presented, the Department has failed to establish by clear and convincing evidence that Respondent intended to commit an IPV concerning his FAP case.

Thus, the Department has failed to establish that that Respondent intended to commit an IPV concerning his FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an 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 an FAP concurrent receipt of benefits. BAM 720, p. 16.

Because the Department failed to establish by clear and convincing evidence that Respondent committed an IPV concerning his FAP benefits, he is not subject to a disqualification from the FAP program.

Overissuance

When a client group receives more benefits than 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that Respondent's son should have been excluded from Respondent's FAP group between October 2012 and March 2013 and, as a result, Respondent should have received FAP benefits for a group size of one, rather than two. The Department's evidence was sufficient to establish that, if Respondent had a group size of one between October 2012 and March 2013, he would have been eligible to receive only \$996 in FAP benefits, rather than the \$1,998 in benefits he actually received during this period, resulting in an alleged OI of \$1,002. RFT 260 (December 2012), pp. 1, 2.

The Department's case for an OI is dependent on a finding that Respondent's 19-year-old son was no longer living with him between October 2012 and March 2013. A client and child under the age of 22 who live together are in the same FAP group. BEM 212, p. 1.

In this case, Respondent acknowledged that his son did not sleep in his home between October 2012 and March 2013, but he argued that his son continued to share his home because he showered and ate at Respondent's home. Department policy defines living together as sharing a home where family members usually sleep except for temporary absences. BEM 212, p. 2. An absence is temporary if the person's location is known, the person lived with the group before the absence, there is a definite plan for the person's return, and the absence has lasted or is expected to last 30 days or less. BEM 212, p. 2. Because Respondent's son was no longer sleeping in his home and had been outside the home for more than 30 days, he was no longer "living" in Respondent's home, or temporarily absent, as defined under policy. As such, Respondent was the sole member of his FAP group between October 2012 and March 2013.

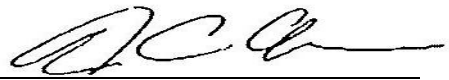
Therefore, the Department has established that it is entitled to recoup and/or collect from Respondent the \$1,002 in FAP benefits that it alleged was overissued to Respondent.

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 received an OI of FAP benefits in the amount of \$1,002.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$1,002 in accordance with Department policy.



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

Date Signed: **9/22/2014**

Date Mailed: **9/22/2014**

ACE / pf

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

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