

**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.: 14-004950
Issue No.: 3005
Case No.: ██████████
Hearing Date: October 9, 2014
County: WAYNE-DISTRICT 57

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 October 9, 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 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 June 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. The Department alleges that Respondent was aware of the responsibility to report changes in circumstances and that he was aware that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
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, 2014 to June 30, 2014 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$945 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 \$945.
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 of his FAP benefits because (i) he trafficked FAP benefits by making two transactions in an unrealistic timeframe; and (ii) he failed to report his fugitive felon status to the Department.

FAP Trafficking

Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2014), p 66. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2013), pp. 2-3.

The Department contended that Respondent's EBT card was identified as having been used to process two transactions at two different locations where the time to travel between the locations was unrealistic. The Department presented Respondent's FAP transaction history showing that transaction one took place on November 3, 2013, at 21:12 for \$3.08 at Mack and Vandyke Mart, Inc., located in Detroit, where the card was swiped and that transaction two took place on November 3, 2013, at 21:20 at Kroger in Westland, where the card was keyed to complete the transaction. (Exhibit 1, p. 54).

Although unusual, the two transactions made on November 3, 2013, do not, by clear and convincing evidence, establish that Respondent trafficked his FAP benefits, as the Department did not present any other evidence to support its contention that Respondent's FAP benefits were trafficked. Therefore, the Department has failed to establish that Respondent committed an IPV based on FAP trafficking.

Failure to Report Fugitive Felon Status

The Department also contended that Respondent committed an IPV because he failed to report to the Department that he was in fugitive felon status. Fugitive felons are not eligible for assistance. A fugitive felon is a person who: is subject to arrest under an outstanding warrant arising from a felony charge against that person; is subject to arrest under an outstanding warrant for extradition arising from a criminal charge against that person in another jurisdiction; or admits to being a fugitive felon. BEM 204 (July 2013), p.1. see also BAM 811 (December 2013).

In this case, the Department alleged that during the course of its investigation into Respondent's alleged FAP trafficking, it discovered that Respondent was a fugitive felon. The Department presented Respondent's offender profile from the Michigan

Department of Corrections Offender Tracking Information System showing that his status as of June 2014, was probationer and that his supervision begin date was September 13, 2013. (Exhibit 1, pp. 11-13). The Department also presented a letter from Respondent's probation officer indicating that a bench warrant was issued for Respondent out of the Third Circuit Court for Failure to Appear. (Exhibit 1, p. 10).

In support of its contention that Respondent committed an IPV by failing to report his fugitive felon status, the Department presented a copy of a Bridges screen which details conviction information. (Exhibit 1, p. 16). The Department testified that based on the information provided by Respondent on his applications and redeterminations, the Department case worker answered "no" to the questions "is this person a fugitive felon?" and "does this individual have a probation or parole violation?" The Department failed to present any of Respondent's applications or redeterminations for review, so it remained unclear when Respondent provided this information to the Department.

Additionally, after further review, although the letter from Respondent's probation officer reveals that Respondent was in warrant status and that a bench warrant was issued, it does not establish that the outstanding warrant arose out of a felony charge against Respondent, as required by BEM 204. (Exhibit 1, p. 10). Therefore, the letter alone is insufficient to establish that Respondent is in fugitive felon status.

Furthermore, BAM 105 provides that clients must report changes in circumstances that potentially affect eligibility or benefit amount within ten days after the client is *aware* of them. BAM 105 (October 2013), pp.8-9. There was no evidence presented to establish that Respondent was aware of the outstanding warrant or his alleged fugitive felon status, nor was there any evidence presented that Respondent was advised of the Responsibility to report changes in circumstances, or that having an outstanding warrant could potentially affect his eligibility for FAP and would need to be reported.

Under the facts presented, the Department has failed to establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Therefore, the Department has failed to establish that Respondent committed an IPV.

Disqualification

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

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 FAP OI for a failure to report a change in circumstances 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. The OI amount for a trafficking-related IPV is the value of the trafficked benefits. BAM 720, p.7.

In this case, the Department testified that although trafficking transactions appeared on Respondent's FAP transaction history, the OI for Respondent's alleged failure to report his alleged fugitive felon status was greater than the OI amount of the two alleged trafficked transactions, so the Department was pursuing recoupment based on Respondent's failure to report his circumstances.

The Department alleged that Respondent was issued FAP benefits in the amount of \$945 between January 1, 2014 and June 30, 2014, and that because of his status as a fugitive felon, he was eligible for \$0 during this period. Although the Department presented a benefit summary inquiry supporting FAP issuances of \$945 during this period, as discussed above, the Department did not present sufficient evidence to establish that Respondent was in fugitive felon status as required by Department policy. Therefore, the Department is not entitled to recoupment, as it has not been established that Respondent received more benefits than he was entitled to receive.

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 in the amount of \$945 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: **10/24/2014**

Date Mailed: **10/24/2014**

ZB / cl

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:

