

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

IN THE MATTER OF:



Reg. No.: 14-005485
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 09, 2014
County: OTTAWA (DISTRICT 70)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 [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 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 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 June 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 aware of the responsibility to report vehicle ownership.
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 12/1/12 through 7/31/13 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] 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 \$ [REDACTED]
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 (2/1/13), p. 102/1/13.

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 (2/1/13), p. 6; 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 has alleged that the Respondent committed an IPV of her FAP benefits when she failed to report excess assets when applying for food assistance on December 2, 2012. At the hearing, the Department introduced evidence that the Respondent had three vehicles registered to her at the time of the application which she did not report. The Department contended that the asset value of the vehicles exceeded the [REDACTED] asset limit for FAP eligibility making the Respondent ineligible for the FAP benefits received. BEM 400 (11/1/12), pp. 28-40.

Department policy regarding asset limits is found in BEM 400 (11/1/12). It provides the following as regards the treatment and valuation of owned vehicles for asset limit purposes:

FAP

There is a \$15,000 limit on countable vehicles owned by the FAP group. Enter the fair market value of all licensed and unlicensed vehicles and the mileage. Do **not** allow for options such as low mileage, automatic transmission, power windows and power locks.

Bridges adds together the fair market value of all licensed and unlicensed vehicles which are not excluded and subtracts \$15,000 to determine the countable value; see **FAP Vehicle Exclusions**. If the countable value exceeds \$15,000 the excess is applied towards the \$5,000 asset limit. For instance, the value of the client's countable vehicles equals [REDACTED]. The remaining amount of [REDACTED] is counted towards the \$5,000 asset limit. BEM 400, pp. 28

FAP Vehicle

Exclusions Highest Fair Market Value Exclusion FAP

Exclude one vehicle with the highest fair market value per household. This exclusion occurs after all other vehicle exclusions are applied. **Example:** A client has three vehicles with fair market values of \$1,500, \$19,000 and \$25,000. The vehicle worth \$1,500 is excluded because the fair market value is \$1,500 or less. Of the remaining fair market values, the vehicle worth \$25,000 is excluded because it is the one with the highest fair market value. Based on the fair market value of the third vehicle, Bridges will count \$4,000 (\$19,000 - \$15,000) towards the \$5,000 asset limit.

The Department used the NADA Book values as allowed by BEM 400 and used the average trade in value. At the time of the application the Michigan Secretary of State records showed that the Respondent owned [REDACTED], a [REDACTED], and a [REDACTED]. These vehicles were valued by the Department using NADA at \$ [REDACTED] and [REDACTED] respectively. Exhibit 1 pp. 31-32 and 37.

No analysis was provided as to the actual calculation of the asset value of these vehicles other than the value assigned to each vehicle. A review of policy indicates that the asset value of the vehicles do not exceed the \$5,000 asset limit. BEM 400 policy

requires that one vehicle with the highest fair market value be excluded, which in this case in the 2007 Cadillac in the amount of \$ [REDACTED]. The remaining vehicles (counted vehicles) values are then added together to determine if they exceed the \$15,000 which is the limit on the value of countable vehicles owned by the FAP group. Using the fair market value of the remaining countable vehicles [REDACTED] [REDACTED]) which total [REDACTED], it is determined that that the Respondent's assets based upon these cars do not exceed the \$15,000 asset value of countable vehicles and, therefore, the Respondent's assets do not exceed the \$5,000 asset limit for FAP groups established by BEM 400. This being the case, it is determined that failure to report the vehicles does not establish an IPV, as the failure to report these assets did not cause the Claimant's assets to be in excess of the \$5,000 asset limit, and thus they did not cause the Respondent to be ineligible for the FAP benefits received. Thus even though the Respondent may not have reported the vehicles as assets, her failure to report the vehicles did not establish an IPV which 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. Based upon the evidence the Claimant received the correct FAP benefits and did not receive an overissuance. BAM 720

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 (10/1/2009), p. 1. 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 failed to establish and IPV and thus is not entitled to a finding of disqualification.

Overissuance

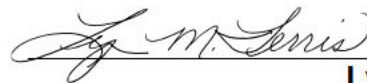
When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2/1/13), p. 1. In this case, the Department's proofs did not establish that the Claimant received more FAP benefits than she was entitled due to her countable vehicle asset value, and thus the Department did not establish any overissuance.

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 [REDACTED] from the FAP program.

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



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/13/2014**

Date Mailed: **10/13/2014**

LMF/tm

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:

