

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

IN THE MATTER OF:

██████████
████████████████████
██████████

Reg. No.: 14-006546
Issue No.: 3005
Case No.: ██████████
Hearing Date: November 05, 2014
County: Wayne-District 31

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 November 5, 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 July 16, 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. Between February 1, 2014 and June 30, 2014, the Department alleges Respondent was issued \$945 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits during this time period.
5. The Department alleges that Respondent received a FAP OI in the total amount of \$945.
6. This was Respondent's first alleged IPV.
7. 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.

In IPV hearing requests filed prior to October 1, 2014, the Department's OIG may request an IPV hearing 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.

In this case, the Department filed a request for hearing on July 16, 2014 alleging that Respondent committed an IPV concerning his FAP benefits and, as a result, was overissued FAP benefits totaling \$945. Because the FAP OI of \$945 does not meet the \$1000 threshold necessary to establish an IPV, and there were no exceptions alleged by the Department that allowed the Department to bring an IPV case with the total OI amount less than \$1000, the Department is not entitled to pursue an IPV action against Respondent. Consequently, Respondent is not subject to a disqualification from the FAP program. See BAM 720, p. 13.

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 FAP 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 a FAP OI of \$945 for February 1, 2014 to June 30, 2014 based on Respondent's lack of Michigan residency. A client must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220 (February 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (February 2014), p. 3.

In support of its case that Respondent received FAP benefits issued by the State of Michigan while he was no longer a Michigan resident, the Department presented (i) a benefit summary inquiry showing that the Department issued \$189 in monthly FAP benefits to Respondent between February 2014 and June 2014 and (ii) a FAP transaction history showing that Respondent was using his Michigan-issued FAP benefits exclusively in Alabama from January 25, 2014 to June 28, 2014, a period in

excess of thirty days. This evidence was sufficient to establish that Respondent was not residing in Michigan during the time he was receiving Michigan-issued FAP benefits. BEM 212, p. 3.

The Department alleges a FAP OI for the period between February 1, 2014 and June 30, 2014. Under Department policy, to determine the first month of the OI period, the Department must 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 out-of-state use that began January 25, 2014, the first month of the FAP OI period was March 2014. Therefore, the Department's calculation of the OI must exclude the FAP issuance to Respondent for February 2014. This reduces the FAP OI to \$756.

Thus, the Department is entitled to recoup and/or collect \$756 from Respondent for overissued FAP benefits between March 2014 and June 2014.

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 may not bring an IPV action against Respondent.
2. Respondent received a FAP OI in the amount of \$756.

The Department is ORDERED to reduce the OI to \$756 for the period March 2014 to June 2014, and initiate recoupment and/or collection procedures in accordance with Department policy.



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

Date Signed: **11/7/2014**

Date Mailed: **11/7/2014**

ACE / tlf

