

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

IN THE MATTER OF:

██████████
██████████████████
██

Reg. No.: 14-001835
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 16, 2014
County: MACOMB-DISTRICT (36)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 July 16, 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
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
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
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report criminal disqualifications to the Department.
5. Respondent had 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 September 1, 2012 to January 31, 2014 (fraud period).
7. During the fraud period, Respondent was issued \$6,179 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$3,367 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$2,812.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 he failed to notify the Department of his additional group member's prior drug-felony convictions, which occurred after August 22, 1996.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (September 2012), p. 5.

A disqualified person is one who is ineligible for FAP because the person refuses or fails to cooperate in meeting an eligibility factor. BEM 212 (April 2012), p. 6. Disqualified members are determined based on how they answer the questions in the Department's system. BEM 212, p. 7. Individuals are disqualified if they have a drug-related felony, second offense. BEM 212, p. 7.

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. BEM 203 (October 2011), p. 1.

A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203, p. 2. The person is disqualified as long as the violation occurs. BEM 203, p. 2.

The following information is regarding a first offense drug-related felony:

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole, FIP benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative.

BEM 203, p. 2.

The following information is regarding a second offense drug-related felony:

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified if both offenses occurred after August 22, 1996.

BEM 203, p. 2.

The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2012 to January 31, 2014. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report his additional group member's criminal justice disqualifications and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated March 23, 2012, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 10-33.

Second, the OIG report indicated that a Front-End Eligibility (FEE) Investigative report was submitted regarding the Respondent. See Exhibit 1, p. 3. Moreover, the OIG report indicated that during the FEE investigation, the Department discovered that the additional group member (live-together partner) had four felony drug convictions. See Exhibit 1, p. 3. The OIG report indicated that the additional group member was added to Respondent's FAP case effective September 1, 2012. See Exhibit 1, p. 3.

Third, the Department presented Respondent's redetermination dated January 25, 2013, which reported Respondent and the additional group member (living together partner) were part of the FAP group. See Exhibit 1, pp. 34-38. Moreover, Respondent marked "no" to the question in the redetermination, which asked if anyone has been convicted of a drug-related felony occurring after August 22, 1996. See Exhibit 1, p. 38. It should be noted that the redetermination was submitted during the alleged fraud period.

Fourth, the Department presented e-mail correspondence from the additional group member's previous probation officer showing she had more than two felony drug convictions after August 22, 1996. See Exhibit 1, p. 39. The e-mail also alleged that Respondent contacted the probation officer inquiring on the additional group member's probation violation sentence. See Exhibit 1, p. 39. The Department inferred that the e-

mail showed Respondent had full knowledge of the additional group member's convictions. See Exhibit 1, p. 9.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The evidence is sufficient to establish that Respondent was aware of his responsibility to report the additional group member's criminal justice disqualifications and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility.

First, the e-mail correspondence from the additional group member's previous probation officer confirmed that the Respondent spoke several times to the officer regarding the additional group member's probation. See Exhibit 1, pp. 3 and 39. As such, it is reasonable to conclude that the Respondent had knowledge of his additional group member's felony drug convictions. See Exhibit 1, p. 39.

Second, the same e-mail correspondence from the previous probation officer established that the additional group member was convicted of a felony for the use, possession, or distribution of controlled substances two or more times after August 22, 1996. See BEM 203, p. 2 and see Exhibit 1, pp. 3 and 39.

Third, the Department presented evidence to establish Respondent's intent for the IPV usage. The Department presented Respondent's redetermination dated January 25, 2013, to show that he committed an IPV during the fraud period. See Exhibit 1, pp. 34-38. A review of the redetermination reported Respondent and the additional group member (living together partner) were part of the FAP group. See Exhibit 1, pp. 34-38. Moreover, Respondent marked "no" to the question in the redetermination, which asked if anyone has been convicted of a drug-related felony occurring after August 22, 1996. See Exhibit 1, p. 38. As such, Respondent committed an IPV of his FAP benefits when he intentionally withheld the additional group member's criminal justice disqualification information (i.e., marking "no" to the drug-related felony question on the redetermination). See Exhibit 1, pp. 34-38. This would have made Respondent's additional group member permanently disqualified from FAP benefits because she was convicted of a second offense drug-related felony after August 22, 1996. See BEM 203, p. 2. This evidence is persuasive to show that the Respondent intentionally withheld information during the fraud period.

In summary, there was clear and convincing evidence that Respondent was aware of his responsibility to report the criminal justice disqualifications and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility. The Department has established that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16. 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 has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

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 OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

As previously stated, Respondent's additional group member should have been permanently disqualified from FAP eligibility because she was convicted of a second offense drug-related felony after August 22, 1996. See BEM 203, p. 2. The OIG report indicated that the additional group member was added to Respondent's FAP case effective September 1, 2012. See Exhibit 1, p. 3. Nevertheless, Respondent continued to receive FAP benefits for a group size of two (Respondent plus living together partner), even though the living together partner was not eligible. As such, Respondent was overissued FAP benefits for any period the additional group member was included in the Respondent's FAP case.

Applying OI period begin date policy, it is found that the appropriate OI begin date is September 1, 2012. See BAM 720, p. 7.

In establishing the OI amount, the Department presented benefit summary inquiries showing that Respondent was issued FAP benefits by the State of Michigan from September 2012 to January 2014 totaling \$6,179. See Exhibit 1, pp. 3 and 40-49. After excluding the additional group member, the corrected total amount of FAP benefits issuance was \$3,367 for a group size of one. See Exhibit 1, pp. 3 and 40-49. The overissuance was established to be \$2,812 in FAP benefits. See Exhibit 1, pp. 3 and 40-49. Thus, the Department is entitled to recoup \$2,812 of FAP benefits. See also RFT 260 (October 2011; December 2012; October 2013; November 2013; and December 2013), pp. 1-48.

It should be noted that Respondent's OI amount included Administrative Recoupment (AR) in its calculations. See Exhibit 1, pp. 40-49. In regards to the OI calculation of FAP benefits, the amount of Electronic Benefit Transfer (EBT) benefits received in the calculation is the gross (before AR deductions) amount issued for the benefit month. See BAM 720, p. 9 and BAM 725 (July 2014), p. 1. Thus, the Department properly included the gross amount of FAP benefits received before AR deductions in the OI calculation. See BAM 720, p. 9 and BAM 725, p. 1.

DECISION AND ORDER

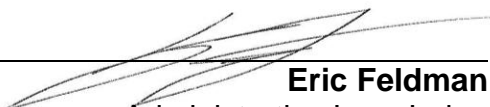
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$2,812 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$2,812 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **7/18/2014**

Date Mailed: **7/18/2014**

EJF/cl

