

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

IN THE MATTER OF:

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

Reg. No.: 14-001929
Issue No.: 3005
Case No.: ██████████
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 08, 2014, from Detroit, Michigan. The Department was represented by ██████████
██████████ 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 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. 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 October 1, 2012, to February 28, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,000 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 FAP OI in the amount of \$1,000.
9. This was Respondent's first alleged FAP 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 and Overissuance

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 because he reported that he was the sole member of his FAP group but he was actually living with his girlfriend and their child-in-common. The Department presented evidence that (i) Respondent had reported in a May 3, 2012, application that he was homeless and identified a mailing address [REDACTED]; and (ii) that in a February 14, 2013, Front End Eligibility (FEE) investigation conducted by the OIG agent at the hearing, Respondent and his girlfriend admitted that they lived together at [REDACTED] mailing address Respondent identified on his application with their child-in-common and the girlfriend's two other children. The Department testified that the girlfriend had her own FAP case and was issued benefits for herself and her three children.

Parents and their children under 22 years of age who live together must be in the same FAP group. BEM 212 (April 2012 and November 2012), p. 1. Although the Department's evidence establishes that Respondent was living with his child and his child's mother in February 2013, it does not establish how long Respondent had been living with them.

Furthermore, an IPV requires the presence of an overissuance. BAM 720, p. 1; see also Bridges Policy Glossary (July 2014), p. 36. When the FAP OI involves two or more FAP groups which the Department contends should have received benefits as one group, the OI amount is determined by adding together all benefits received by the groups that must be combined, and subtracting the correct benefits for the one combined group. BAM 720, p. 8. In this case, in establishing the OI required to support its IPV allegation, the Department argues that Respondent was not eligible for any of the benefits he was issued from October 1, 2012, to February 28, 2013, and alleges an OI of \$1,000. The OI amount alleged by the Department is the total amount of FAP benefits issued to Respondent. The Department did not present any evidence establishing the amount of FAP benefits issued by the Department to the girlfriend between October 2012 and February 28, 2013 or the amount of benefits Respondent was eligible to receive if in the same group as his girlfriend and the children. Because the Department did not properly calculate the OI, the Department did not satisfy its burden of establishing an OI.

Because the Department did not establish an OI, it has failed to satisfy its burden of showing that an IPV occurred. Accordingly, Respondent is not subject to a disqualification from the FAP program and the Department is not eligible to recoup and/or collect the \$1,000 in FAP benefits issued to Respondent between October 2012 and February 2013. BEM 720 (May 2014), pp. 8, 16.

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 FAP benefits in the amount of \$1,000.

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



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

Date Signed: **9/11/2014**

Date Mailed: **9/11/2014**

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]