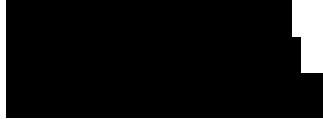


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-005973
Issue No.: 3005
Case No.:
Hearing Date: October 22, 2014
County: WASHTENAW
(DISTRICT 20)

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 October 22, 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 July 11, 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 changes in residence and to report his 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 FAP fraud period is January 14, 2013, to December 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$2,294 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 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 \$2,294.
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.

In this case, the Department alleged that Respondent committed a FAP IPV. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the hearing, the notice and documents were returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 10. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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 that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state. Also, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department of his prior drug-felony convictions, which occurred after August 22, 1996.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012), p. 1.

For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1.

For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (November 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

Additionally, 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, 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, 2nd 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 2012), p. 1.

The following information is regarding a 1st 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 2nd 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 January 14, 2013, to December 31, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report changes in residence and his criminal justice disqualification (drug-related felony) and that he intentionally withheld this information for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated January 14, 2013, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 10-31. Moreover, the Department argued that at the time of application, Respondent failed to report that he had two felony drug convictions dated May 24, 2001 and February 3, 2006. See Exhibit 1, pp. 1 and 5. In fact, the Department presented Respondent's Offender Tracking Information System (OTIS) report from the Michigan Department of Corrections (MDOC) and a Jackson County Case Detail screen. See Exhibit 1, pp. 43-46. The evidence established that Respondent received two felony drug convictions after August 22, 1996. See Exhibit 1, pp. 43-46.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 41-42. The FAP transaction history showed that from July 9, 2013, to November 10, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Massachusetts. See Exhibit 1, pp. 41-42.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits.

First, the evidence presented that Respondent 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. 43-46.

Second, the Department presented evidence to show that Respondent committed the IPV during the fraud period. In the application (dated January 14, 2013), Respondent made "no" to the question if whether he was convicted of a drug felony, even though the evidence established that he was convicted of two drug-felonies. See Exhibit 1, p. 5. As such, Respondent committed an IPV of his FAP benefits when he intentionally withheld his criminal justice disqualification information (i.e., marking "no" to the drug-related felony question on the application). See Exhibit 1, p. 5. This would have made Respondent permanently disqualified from FAP benefits because he 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.

Third, Respondent's FAP transaction history also showed that from July 9, 2013, to November 10, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Massachusetts. See Exhibit 1, pp. 41-42.

In summary, there was clear and convincing evidence that Respondent was aware of his responsibility to report his criminal justice disqualification/change in residency and and that he intentionally withheld this 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 should have been permanently disqualified from FAP eligibility because he was convicted of a 2nd offense drug-related felony after August 22, 1996. See BEM 203, p. 2. Moreover, the FAP transaction history showed that Respondent did not reside in Michigan. Thus, he was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits.

In establishing the OI amount, the Department presented Respondent's benefit summary inquiry showing that he was issued FAP benefits by the State of Michigan from January 14, 2013, to December 31, 2013, which totaled \$2,294. See Exhibit 1, pp. 47-48. Thus, the Department is entitled to recoup \$2,294 of FAP benefits.

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 \$2,294 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$2,294 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: **10/27/2014**

Date Mailed: **10/27/2014**

EJF / 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:

[REDACTED]