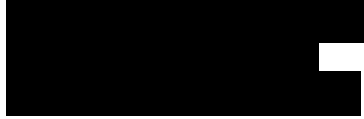


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-006811
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 27, 2014
County: OAKLAND (2)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 27, 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 July 27, 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 changes in his residence to the Department.
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 June 1, 2011 through October 31, 2011 (fraud period).
7. During the alleged fraud period, Respondent was issued \$1,000.00 in FAP 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 FAP benefits in the amount of \$1,000.00.
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 (January 2011), p. 4.

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 (January 2011), 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 initially alleged that Respondent committed an IPV of the FAP program in the amount of \$1,000.00 from June 1, 2011 through October 31, 2011. However, under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the Recoupment Specialist (RS), whichever is later. BAM 715, p. 4. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 715, pp. 4-5. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, pp. 4-5. Because the first out-of-state usage began on May 15, 2011, the correct OI period began on July 1, 2011.

In support of its contention that Respondent committed an IPV, the Department presented evidence that beginning May 15, 2011, Respondent used his Michigan issued FAP benefits in Wisconsin and continued to use his Michigan issued FAP benefits out of state until November 22, 2011. Accordingly, the SOP requires that the OI period would not begin until July 1, 2011. The Department agreed that the fraud period should be revised to reflect a begin date of July 1, 2011.

The benefit summary presented by the Department revealed that Respondent received \$800.00 between July 1, 2011 and October 31, 2011. The Department concedes that Respondent does not have a previous IPV and it has not provided any evidence that Respondent meets any of the other criteria which would allow it to request an IPV hearing for an amount less than \$1,000.00. As such, it is found that the Department has failed to establish the Respondent committed an IPV of FAP benefits from July 1, 2011 through October 31, 2011.

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. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 13. 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 has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

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 a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (January 2011), p. 5; BAM 705 (January 2011), p. 5. At the hearing, the Department alleged that the State of Michigan issued a total of \$800.00 in FAP benefits to Respondent from July 1, 2011 through October 31, 2011. The Department further alleged that Respondent was eligible for \$0.00 in FAP benefits during this period. As previously stated, Respondent's benefit summary revealed that he was issued FAP benefits in the amount of \$800.00 between July 1, 2011 and October 31, 2011.

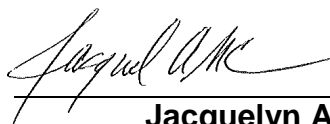
The Department also presented Respondent's FAP transaction history showing his use of FAP benefits issued by the State of Michigan exclusively in Wisconsin and Illinois from May 15, 2011 through November 22, 2011. As discussed above, Respondent was no longer eligible for FAP benefits after he resided outside Michigan for more than 30 days. By July 1, 2011, it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p 2. Therefore, the Department has established it is entitled to recoup the \$800.00 in FAP benefits it issued to Respondent from July 1, 2011 through October 31, 2011.

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 received an OI of FAP program benefits in the amount of \$800.00.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$800.00 in accordance with Department policy relating to an OI of FAP benefits from July 1, 2011 through October 31, 2011.



Jacquelyn A. McClinton
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/18/2014**
Date Mailed: **11/18/2014**
JAM / 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]