

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

IN THE MATTER OF:



Reg. No.: 14-007245
Issue No.: 3005
Case No.:
Hearing Date: November 3, 2014
County: ST. CLAIR

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 November 3, 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 23, 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 and his failure to report his dates of incarceration.
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 July 1, 2011 to October 31, 2011, and January 1, 2014 to June 30, 2014 (fraud periods).
7. During the fraud period, Respondent was issued \$1,738 in FIP FAP SDA CDC MA 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 OI in FIP FAP SDA CDC MA benefits in the amount of \$1,738.
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. The Department presented two separate fraud periods for Respondent's alleged IPV's.

As to the first alleged fraud period of July 1, 2011 to October 31, 2011, the Department testified that Respondent resided in jail during this time period and he failed to notify the Department of his incarceration. The Department testified that it contacted Oakland County Jail and confirmed that Respondent resided in jail from June 6, 2011 to October 31, 2011. See Exhibit 1, p. 3. The Department argued that Respondent failed to notify the Department of his incarceration and furthermore, he was ineligible to receive FAP benefits during the time he was incarcerated.

At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report his incarceration and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated August 18, 2009, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 10-25.

Second, the Department presented Respondent's redetermination dated June 28, 2011. See Exhibit 1, pp. 26-29. In the redetermination, Respondent did not indicate any change in address, even though the evidence showed he would have been incarcerated at the time he submitted the redetermination. See Exhibit 1, p. 28.

A person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FIP, SDA or FAP benefits. BAM 804 (October 2008), p. 1 and see

also BEM 212, FAP group composition (residents of institutions are not eligible for FAP). BEM 212 (September 2010), pp. 5-6.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits for the first fraud period. The evidence is sufficient to establish that Respondent was incarcerated from June 6, 2011 to October 31, 2011. See Exhibit 1, p. 3. Moreover, the Department presented evidence to establish Respondent's intent during the IPV usage. The Department presented Respondent's redetermination dated June 28, 2011, in which he failed to indicate that he had been incarcerated at the time he submitted the redetermination. See Exhibit 1, p. 28. This shows that the Respondent intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility. Because Respondent had been in a correctional facility for more than 30 days, he was not eligible to receive FAP benefits. See BAM 804, p. 1.

As to the second alleged fraud period of January 1, 2014 to June 30, 2014, 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.

At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report his criminal justice disqualifications and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility.

First, the Department testified that Respondent was convicted for possession of a controlled substance (a felony) on June 6, 2011 and December 23, 2013. See Exhibit 1, p. 3. The Department testified that Respondent never informed the Department that he received a second felony conviction. It should be noted that the Department testified that the Michigan Department of Corrections (MDOC) Offender Tracking Information System (OTIS) did not contain a record of his drug felony convictions.

Second, the Department presented three of Respondent's redetermination's dated from June 2011 to June 2013. See Exhibit 1, pp. 26-37. In each redetermination, Respondent marked "no" to the question if he has even been convicted of a drug-related felony occurring after August 22, 1996. See Exhibit 1, pp. 29, 33, and, 37.

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.

BEM 203 (July 2013), p. 2. 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 in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996.

BEM 203, p. 2.

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

First, the evidence presented that Respondent was convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. See BEM 203, p. 2.

Second, the evidence presented that Respondent intentionally withheld his criminal justice information (second drug-related offense) from the Department. In fact, Respondent intentionally withheld his first drug-related felony offense from the Department. The Department presented three of Respondent's redeterminations dated from June 2011 to June 2013. See Exhibit 1, pp. 26-37. In each redetermination, Respondent marked "no" to the question if he has even been convicted of a drug-related felony occurring after August 22, 1996. See Exhibit 1, pp. 29, 33, and, 37. Even though Department policy allows individuals to receive FAP benefits with their first drug-related felony offense, Respondent failed to indicate in the redeterminations that he had received his first drug-related felony offense. This reasonably infers that Respondent intentionally withheld his criminal justice information from the Department. Furthermore, it establishes that Respondent was aware of his responsibility to report his criminal justice disqualification and that he intentionally withheld this information for the purpose of maintaining Michigan FAP eligibility.

In summary, there was clear and convincing evidence that Respondent was aware of his responsibility to report his criminal justice disqualification/incarceration period 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 disqualified from FAP benefits for 12 months. BAM 720, p. 16.

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits. Applying the OI begin date policy, it is found that the Department applied the appropriate OI begin dates of July 1, 2011 and January 1, 2014. See BAM 720, p. 7.

Additionally, 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 to the first OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from July 2011 to October 2011, which totaled \$800. See Exhibit 1, p. 41. As to the second OI amount, the benefit summary inquiry showed that Respondent was issued \$938 from January 2014 to June 2014. See Exhibit 1, p. 38. Therefore, the Department is entitled to recoup \$1,738 (\$800 plus \$938) of FAP benefits it issued to Respondent from July 1, 2011 to October 31, 2011, and January 1, 2014 to June 30, 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 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 \$1,738 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$1,738 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: **11/7/2014**

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

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]