

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

IN THE MATTER OF:

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Reg. No.: 14-008875
Issue No.: 3005
Case No.: ██████████
Hearing Date: January 05, 2015
County: KENT-DIST. 1 (FRANKLIN)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 January 5, 2015, 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 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 August 6, 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 his incarceration while receiving food benefits.
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 November 1, 2012 through June 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued ██████ 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 OI in FAP benefits in the amount of ██████
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 (2/1/13), p. 10.

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 (2/1/13), p. 3; 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 an intentional program violation for trafficking as the Department alleges that Respondent's food assistance benefits were used and EBT purchases were made for FAP benefits issued while he was incarcerated. The Department alleges that the Respondent had a responsibility to report that he was incarcerated and failed to do so. Additionally, the Department has alleged that the Respondent was ineligible for FAP benefits while incarcerated.

Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2013), p 65. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (October 2011), pp. 2-3.

As part of its proofs, the Department did not provide actual EBT card usage transactions during the period of Respondent's alleged incarceration. Instead, the Department provided an Eppic Report showing that the Respondent was issued ██████ per month in food assistance during the period of the alleged fraud, November 1, 2012 through June 30, 2013. In addition, the Department provided a FAP transaction made on August 1, 2013, after the Respondent's incarceration ended, indicating a food assistance balance of ██████ Exhibit 1, page 61. The Department argued that because there was not ██████ left on the Respondent's EBT card, in August 2013, that Respondent's FAP benefits were trafficked while the Respondent was incarcerated through June 2013. The Department did not provide evidence that demonstrated that the Respondent's benefits were used by someone other than the Respondent while he was incarcerated. Additionally, the Department presented evidence of the Respondent's incarceration for the period in question based upon an email from a detective in the ██████ Department. Exhibit 1, page 62. The Department alleges based on this evidence, that an over issuance of ██████ and intentional program violation involving trafficking occurred. The Department seeks an IPV for the fraud period November 1, 2012 through June 12, 2013.

Based upon Department policy set forth below it is clear that Respondent was not eligible for Food Assistance while in jail. A jail is clearly an institution, and in this case, a public nonmedical institution. Thus, based on BEM 212 it is determined that

Respondent was ineligible during the period of his incarceration, from November 1, 2012 through June 12, 2013. The applicable policy provides the following.

Institution means an establishment furnishing food, shelter and some treatment or services to more than three people unrelated to the proprietor. BEM 265 (7/1/12), pp.1

Public nonmedical institution means a government-operated facility that does not provide medical care (e.g. jail or prison). A community residence facility for fewer than 17 people or a school is not considered a public nonmedical institution. BEM 265 pp.1

Residents of Institutions

A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services.

Residents of institutions are **not** eligible for FAP unless one of the following is true:

- The facility is authorized by the Food and Consumer Service to accept FAP benefits;
- The facility is an eligible group living facility; see BEM 615; and
- The facility is a medical hospital and there is a plan for the person's return home; see **Temporary Absence** in this item. BEM 212 (11/1/12), pp.6

Lastly, the Department alleges that the Respondent trafficked his Food Assistance while incarcerated. None of the evidence presented by the Department demonstrated that the Respondent's food assistance was used during the period he was incarcerated. While the evidence did show that the Respondent was incarcerated during the fraud period, the Department did not demonstrate by clear and convincing evidence that someone else other than the Respondent purchased and utilized the Respondent's food assistance during his incarceration. The Department's argument that in August 2013, only █████ remained on the Respondent's EBT card does not demonstrate that someone else used the card in Respondent's absence while he was incarcerated to establish trafficking. Clearly, the Respondent could have utilized his EBT card upon release from jail to purchase food assistance. Lastly, under the facts presented, the Respondent's failure to report incarceration is not in and of itself an intentional program violation.

Thus, the Department is not entitled to a finding of intentional program violation.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12-13. 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, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/12), 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. 13.

In this case, because the Department has not established an intentional program violation occurred based upon the evidence submitted at the hearing, the Department is not entitled to a finding of disqualification.

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.

In this case, the Department based upon the evidence presented, demonstrated that the Respondent was ineligible to receive food assistance during the period he was incarcerated from November 1, 2012 through June 12, 2013. Exhibit 1, p. 62. Further, the Department's evidence demonstrated that during this period, the Respondent received ██████ in food assistance. Exhibit 1, p. 59. Thus, the Department has demonstrated that it is entitled to recoup \$█████ of food assistance which was over issued.

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 receive an OI of program benefits in the amount of ██████ from the following program(s) FAP.

