

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

IN THE MATTER OF:

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

Reg. No.: 14-011022
Issue No.: 3005
Case No.: ██████████
Hearing Date: May 11, 2015
County: EATON

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 May 11, 2015 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Respondent appeared pro se.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (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 September 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 requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2011 through June 30, 2012.
5. During the fraud period, Respondent was issued [REDACTED] 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.
6. The Department alleges that Respondent received an OI of FAP benefits in the amount of [REDACTED]
7. This was Respondent's first alleged IPV.
8. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable; respondent appeared at the hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700, p. 1.

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 their reporting responsibilities.

BAM 700 (2011), p. 6; 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.

The federal Food Stamp regulations read in part:

(c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
- (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2011), p. 10.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 15.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. BAM 720, p. 12. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (2011), 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 concurrent receipt of benefits. BAM 720, p. 13.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, with regard to the FAP program. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Furthermore, the undersigned is convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to their FAP eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware

of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to commit an IPV.

In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has met that burden in the current case. On November 1, 2011, respondent filed a semi-annual contact report (Department Exhibit 5). On this contact, respondent reported no earned income changes since the last report.

This statement was false.

Per earnings statements obtained by the Department, respondent's partner, a member of the FAP group, was earning significantly more than what was originally budgeted in FAP benefits; these earnings would have disqualified respondent from FAP benefits.

While respondent testified that this group member was not in the household at the time, respondent has presented insufficient evidence to prove that fact. Respondent submitted one email from the Department that requested income verification; respondent forwarded this email to her partner, and argued during the hearing that it was proof that the partner had left the household.

The undersigned does not believe that this constitutes particularly strong evidence. One can forward email to a partner living in the same household quite easily; the undersigned often forwards email to his own partner, especially when the communicate is something both household members should view. The act of forwarding an email does not in any way delineate who is a household member and who is not.

Furthermore, no record appears to exist stating that this household member had left the group.

Additionally, respondent testified that this group member had left the group in January, 2011. However, a redetermination filed in May, 2011 (Department exhibit 3), and the aforementioned semi-annual contact both contain statements that the household member in question still resides in the household. Additionally, numerous notices of case action all contain statements that the household member in question is considered in the benefit action.

If the household member had truly left when respondent says that they did, the question becomes whether respondent lied on the semi-annual contact with regard to income, or whether the respondent lied with regard to whether the household member was still there. Given that a loss of a household member would result in decreased benefits, the

undersigned sees little difference between the two with regards to Intentional Program Violation findings.

Therefore, given that respondent stated several times that this person was in the household, and given that little evidence has been presented to contradict those statements, the undersigned finds that the respondent's partner was in the household, and that therefore, the statement on the semi-annual contact regarding no change in income was

Had respondent listed the correct information, respondent would have had lower FAP benefits, due to excess income.

Respondent misrepresented their income on their paperwork, and this misrepresentation is evidence of malfeasance with regards to respondents reporting requirements.

As such, if respondent purposely failed to report their income to the Department, it must follow that respondent made this misrepresentation for the purpose of securing FAP benefits, and therefore has committed an Intentional Program Violation.

The Department has submitted recoupment budgets for the time period in question, which use the respondent's actual income during the time period in question to show what benefits respondent should have received. After a review of the budgets, the undersigned found no significant errors, and holds that the Department has shown that the recoupment amount requested is correct. As such, the Department request for recoupment of [REDACTED] in FAP benefits is proper.

This amount may be recouped in full.

Furthermore, evidence indicates that this is the first IPV for which the respondent has been found responsible.

Per policy found at BAM 720, the proper penalty for a first Intentional Program Violation is a one year disqualification from FAP benefits. Therefore, the Department's request to impose a one year sanction on the claimant is granted.

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. Respondent did commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] in FAP benefits.

□ □ □ □ □

period of 12 months.

Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/19/2015**

Date Mailed: **6/19/2015**

RJC/tm

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

Government	Percentage
Current government	70%
Previous government	30%