

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-012808
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 23, 2015
County: Oakland (3) Southfield

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a three-way telephone hearing was held on April 23, 2015, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED].

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 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 October 9, 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 any household changes, including changes with 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 periods it is considering the fraud period are September 1, 2013, through October 31, 2013, and February 1, 2014, through September 30, 2014, (fraud period).
7. 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 \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
- the total amount is less than \$500, 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 (October 1, 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 1, 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 has established that Respondent was aware of the responsibility to timely and accurately report to the Department all household changes, including changes with residence. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days of receiving the first payment reflecting the change. BAM 105, (July 1, 2013), p. 8. Respondent's signature Redetermination, Semi-Annual Contact Report, and Assistance

Application in this record certifies that he was aware of the change reporting responsibilities and that fraudulent participation in benefits could result in criminal or civil or administrative claims. Respondent had no apparent physical or mental impairment that limits understanding or ability to fulfill the reporting responsibilities.

The record contained an Electronic Benefit Transfer (EBT) History of FAP purchases during the time period in question which demonstrated that Respondent used the Michigan-issued EBT card out of state for 30 (thirty) days or more. From July 17, 2013, through April 9, 2014, most transactions occurred out of state in [REDACTED]. The few transactions that occurred in Michigan were on November 30, 2013, and December 21-23, 2013. Further, the Department submitted documentation that Respondent's wife began employment September 16, 2013. The Department asserts that Respondent failed to report when the FAP group was no longer residing in Michigan as well as the income from his wife's employment. Additionally, the Department noted that school records were not returned for Respondent's daughter from the [REDACTED] County School District during the fraud period indicating she was not enrolled in [REDACTED] County Schools.

The OIG Regulation Agent testified that the amount of the FAP benefits paid for September and October 2013 indicate a FAP group size of 2; the amount of the FAP benefits paid for February through April 2014 indicate a FAP group size of 2; the amount of the FAP benefits paid for May 2014 through July 2014 indicate a FAP group size of 1; and the amount of the FAP benefits paid for August and September 2014 indicate a FAP group size of 2.

Respondent testified that he let the Department know from the beginning that his situation was fluid and he was in and out of the State of Michigan. Respondent explained that he lost his house in 2013, and his family tried to find places to stay. Respondent acknowledged that his wife got a job in [REDACTED] in 2013, but stated he did not have any access to her income. Respondent noted that only he and his daughter were on the FAP case. Respondent also asserted that he and his daughter did not move to [REDACTED] when his wife started her job in that state. Respondent's testimony indicated that at one point he and his daughter found a place to stay in [REDACTED] County, and the case was transferred from [REDACTED] to [REDACTED] County. Respondent further testified that his daughter went to [REDACTED] to go to school from January 2014 until May 2014. Respondent indicated his daughter was then added back to the FAP case when she returned from [REDACTED]. Respondent's testimony regarding when his daughter returned from [REDACTED] was inconsistent. Respondent asserted that he was trying to provide for his family and did not intend to try to get benefits he was not eligible for.

A September 17, 2014, email from Respondent to the previously assigned OIG Regulation Agent was included in the Department's hearing exhibits. In part, Respondent acknowledged that his card was used primarily in [REDACTED]. Respondent explained that his wife was struggling there by herself while she waited to start full time work and Respondent did not think it was a big deal. This is not consistent with the FAP benefits only being issued for Respondent and his daughter.

Overall, Respondent's testimony cannot be found fully credible and the evidence supports the Department's determination that Respondent did not timely and accurately report household changes to the Department. For example, if Respondent's wife was never included on the FAP case, and Respondent's daughter was going to school in Indiana from January 2014 until May 2014, FAP benefits should not have been issued for a group size of two from February 2014 through April 2014. Additionally, the use of the FAP card nearly exclusively in [REDACTED] between July 17, 2013, and April 9, 2014, does not support Respondent's testimony that he was back and forth between states. Accordingly, the Department has established that the Respondent committed an IPV by clear and convincing evidence.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (April 1, 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 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.

In this case, the evidence of record shows that Respondent committed his first FAP IPV, which carries a 12-month disqualification.

Overissuance

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

In this case, the evidence of record shows that during the above-mentioned fraud period Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/27/2015**

Date Mailed: **4/27/2015**

CL/jaf

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).

cc:

