

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

IN THE MATTER OF:



Reg. No.: 14-014721
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2015
County: Muskegon

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 April 15, 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 Respondent.

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 October 31, 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 her employment and income.
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 May 1, 2008, through August 31, 2011, (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 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 \$500 or more, **or**
 - the total OI 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 (10/1/14), p. 14.

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 (5/1/14), 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, Respondent was employed at Adecco for various periods of time. He worked at Adecco very briefly in 2002, then he worked in November and December 2007. He returned to work there from March 2008 through November 2008. He

returned yet again from August 2009 through March 2010. He also worked seasonally at The Lake House during the summers of 2010 and 2011.

Respondent's income is reflected at Exhibit A Pages 54-70. Exhibit A Pages 76-102 provide the budgets reflecting the FAP Respondent received based upon the circumstances he reported, and the amount he would have received if his income had been reported timely. However, those budgets contain significant errors. Pages 98-102 are the budgets for the months of April through August 2011. The first error is that each of those budgets identifies his income as "unearned" rather than "earned." That causes the undersigned to be skeptical of the veracity of the rest of the contents. The Department states he had income of \$3,279.00 in July 2011, but the evidence at Page 62 indicates he only had income of \$1,491.39 for that month. The Department states he had income of \$2,648.00 in August 2011, but the evidence at Pages 63 and 64 only show income of \$1,701.81 for that month.

The Department provided an Issuance Summary that identifies the specific months in which it believes fraud occurred. Exhibit A Page 75 shows that fraud was believed to have occurred in May 2008 through November 2008, and October 2009 through January 2010. It alleges Respondent was issued \$ [REDACTED] in FAP, and that he should have received just \$ [REDACTED] leaving an OI of \$ [REDACTED]. That is irreconcilable with the Hearing Summary in which it alleged he received \$ [REDACTED] in FAP, should have received \$ [REDACTED] and had an OI of \$ [REDACTED]. It is unclear why that summary does not include the rest of the months that comprise the alleged fraud period.

Exhibit A Pages 76-97 reflect calculations of alleged OI from May 2008 to November 2008 and October 2009 to January 2010. The amounts used by the Department as Respondent's income for the months of May 2008 to November 2008 and November 2009 to January 2010 are accurate. The Department contends that Respondent had income in December 2008 of \$ [REDACTED]. There are two reports from Adecco (Exhibit A Pages 48 and 52) but neither of those reports show any income for December 2008.

Respondent submitted an application on February 6, 2009. (Exhibit A Pages 20-34) At that time he reported no employment and no income. On February 11, 2008 (Exhibit A pages 12-18) he had reported no income. In a Redetermination (Exhibit A Pages 37-40) dated January 5, 2010, he reported that his job at Adecco had started "6 months ago." Then, in another Redetermination (Exhibit A Pages 41-44) from December 2010 he said he had started at Adecco December 14, 2010.

The Department has presented clear and convincing evidence that Respondent did not accurately report his employment or his income to the Department. It has not, however, provided evidence to support the fraud period or the OI that it had claimed. The evidence shows that his income was under-reported for the months of May 2008 to November 2008, and November 2009 to January 2010.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 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 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 (7/1/13), 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, this is the Respondent's first FAP IPV. He is to be disqualified for 12 months.

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, Respondent received \$ [REDACTED] in FAP during the fraud period. He was entitled to \$ [REDACTED] of those benefits, and consequently, he received an OI of \$ [REDACTED] in benefits that are to be recouped.

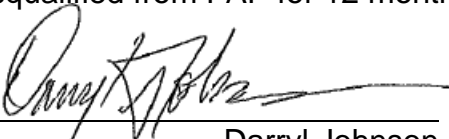
DECISION AND ORDER

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 procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for 12 months.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/16/2015**

Date Mailed: **4/16/2015**

DJ/hj

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:

