

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017409
Issue No.: FOOD ASSISTANCE PROGRAM
Case No.: [REDACTED]
Hearing Date: April 01, 2015
County: SAGINAW

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 1, 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: Schlar Erwin.

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 December 12, 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.
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3. Respondent was a recipient of FAP benefits issued by the Department.

4. Respondent was aware of the responsibility to completely and truthfully answer all questions on forms and in interviews and 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.
5. Respondent did not have an apparent physical or mental impairment that would limit understanding or ability to fulfill this requirement.
6. Respondent has two drug related felony convictions with sentencing dates of April 24, 2003, and February 19, 2013.
7. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2013, through December 31, 2013, (fraud period).
8. 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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. This was Respondent's first alleged IPV.

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 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 (10-1-2014), 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 (5-1-2014), 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 completely and truthfully answer all questions on forms and in interviews. BAM 105, 11-1-2012, p. 5. Department policy also 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, 11-1-2012, p. 7. Respondent's signature on the February 8, 2011, and January 23, 2012, Assistance Applications, as well as on the November 19, 2012, and December 18, 2013, Redeterminations, in this record certifies that she was aware of the reporting responsibilities and that fraudulent participation in benefits could result in criminal, civil or administrative claims.

Respondent's testimony that she thought the questions regarding felony drug related convictions were optional and therefore she skipped answering them can only be found partially credible. There is some support in the documentary evidence that Respondent skipped answering these questions when she completed the Department forms. However, the assertion that Respondent believed these questions were optional cannot be found credible. There is nothing on the application or redetermination forms indicating these questions are optional. For example, on the application form the relevant section is captioned "Information DHS Needs to Know" and there is an instruction to "Answer for everyone in your household" and the affidavit above the Respondent's signature included swearing or affirming that the best of her knowledge, the facts are true and complete and that all the information she has written or told the Department specialist is true. On the Redetermination form similar language is included for the relevant section of questions and the penalty warning above Respondent's signature.

It was uncontested that Respondent has two drug related felony convictions with sentencing dates of April 24, 2003, and February 19, 2013. Pursuant to BEM 203, 10-1-2012, p. 2, 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. Accordingly, with the second drug related felony conviction, Respondent became an ineligible FAP group member.

The OIG Regulation Agent acknowledged that the fraud period and OI amount initially asserted by the Department were incorrect. The OIG Regulation Agent indicated the fraud period and OI amount should be determined from the sentencing date of the second drug related felony conviction, February 19, 2013. Given the time frames allowed by policy for a client to report changes and for the Department to act on a change, the OIG Regulation Agent testified that the fraud period is actually April 1, 2013, through December 31, 2013. During the fraud period, the documentary evidence shows that Respondent was issued \$3,263 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,767 in such benefits during this time period. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,496.

The OIG Regulation Agent further acknowledged the issues relating to a failure to report child support income noted in the documentary evidence would not affect the revised fraud period and OI amount.

There is no evidence showing Respondent accurately reported her drug related felony convictions to the Department as required by policy. Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill the reporting responsibilities. Accordingly, the Department has established the Respondent committed an IPV by clear and convincing evidence.

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. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. 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 evidence of record shows that Respondent committed her first FAP IPV, which carries a 12 month 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 FAP budgets for the fraud period were re-calculated to exclude Respondent from the FAP group. 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 received an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period April 1, 2013, through December 31, 2013, and initiate recoupment procedures 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, Interim Director
Department of Human Services

Date Signed: **4/2/2015**

Date Mailed: **4/2/2015**

CL/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:

