

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25696
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 3, 2014
County: Kent

ADMINISTRATIVE LAW JUDGE: Darryl T. 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 3, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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 February 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.

3. Respondent was a recipient of FAP benefits issued by the Department.
4. When Respondent applied for benefits on May 1, 2012 he identified himself as a refugee who needed a Burmese interpreter. (Exhibit 1 Pages 10-26.) He had entered the United States on April 22, 2012.
5. Respondent was aware of the responsibility to report changes of his address within ten days.
6. Respondent had an apparent physical or mental impairment, particularly a lack of understanding of the English language, which would limit his understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2012 through March 31, 2013 (fraud period).
8. During the fraud period, Respondent was issued \$ [REDACTED] in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 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.
11. 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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 (7/1/13), p. 12.

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 (7/1/13), 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.

In this case, when Respondent completed his application for benefits he had been in the United States for approximately nine days. He needed an interpreter to help him complete the application. He first used his benefits on May 14, 2012, in Kentwood, Michigan. His last use in Michigan was on June 30, 2012, approximately seven weeks

later. He then began using his FAP in Indiana beginning July 6, 2012, and used them exclusively in Indiana through January 2, 2013. (Exhibit 2.) Because Respondent needed an interpreter to complete the application, the undersigned is not persuaded by clear and convincing evidence that he understood the obligation to report changes in his residence, or that he intentionally violated program rules. Also, the Respondent left \$ [REDACTED] in unused benefits which is indicative of a lack of intent to use benefits he was not entitled to.

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. BAM 720, p. 16. 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, the Department has not presented clear and convincing evidence that an IPV occurred, and therefore a disqualification is not permissible.

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 has established by clear and convincing evidence that an OI has occurred. Respondent received FAP of \$200 per month while he was residing in Indiana from September 2012 through January 2013. The Department's position is that Claimant received FAP improperly through March 31, 2013 (Exhibit 1 Page 3) yet it acknowledges that he stopped using his FAP in Indiana on January 2, 2013. The Department also noted, "A further check of EBT records show that \$600 in FAP benefits currently remains on the subject's card." Indiana reported that Respondent received food benefits there from December 2012 through May 2013. (Exhibit 1 Page 30.)

The evidence is sufficient to establish that Claimant received benefits of \$200 per month from September 2012 through January 2013. The Department has established an OI 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 not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).

2. Respondent received an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period September 1, 2012 through January 31, 2013, and initiate recoupment procedures in accordance with Department policy.

Respondent is not subject to a disqualification period.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 4, 2014

Date Mailed: April 4, 2014

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

DTJ/las

cc:

[REDACTED]