

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

IN THE MATTER OF:



Reg. No.: 2014-27586
Issue No(s): 2005, 3005, 5005
Case No.: [REDACTED]
Hearing Date: June 5, 2014
County: Genesee-06

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 June 5, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent appeared at the hearing and testified.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP), State Emergency Relief (SER) and Medical Assistance (MA) 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 20, 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, SER, and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in his household circumstances.
5. Respondent had no 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 June 1, 2012 through April 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits, \$ [REDACTED] in SER benefits, and \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] an OI in SER benefits in the amount of \$ [REDACTED] and an OI in MA 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 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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family

Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

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, Claimant applied for FAP and MA on February 1, 2012, and he acknowledged that he understood that he needed to report changes in his household circumstances. He was awarded FAP and MA. On August 23, 2012, Claimant applied for SER. (Exhibit 1 Pages 25-30.)

Claimant testified that he had a brother in Little Rock, Arkansas, who was sick with cancer, and that he would drive to Arkansas to take care of his brother. He would return to Michigan once a month for a doctor appointment. Exhibit 1 Pages 21-22 is a list of all of Claimant's FAP usage from April 12, 2012 through April 12, 2013. Other than a single purchase in Michigan on April 12, 2012, every purchase of food was made in Arkansas during that one-year period.

Claimant used his MA each month from June 2012 through April 2013. He received \$ [REDACTED] in benefits. (Exhibit 1, Page 24.) On September 12, 2012, the Department paid \$ [REDACTED] to [REDACTED] to pay Claimant's utility costs.

BEM 220 (4/1/14) states, "To be eligible, a person must be a Michigan resident." For FAP, "A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely." Regarding MA, BEM 220 states, "A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished."

Claimant's address on his original application and his SER application are the same address where Claimant resides as of the hearing date. While there is some question regarding Claimant's credibility¹, Claimant has persuaded the undersigned that, regardless of how frequently he returned to his home in Michigan, he left Michigan to care for his brother and intended to return home "when the purpose of the absence has been accomplished." Because he was a Michigan resident he has not committed an IPV.

¹ Claimant testified that he previously had an IPV hearing "last year" regarding the issues raised in this hearing, and that the matter was dismissed. The only hearing involving Claimant in 2013 was a hearing he requested. Claimant did not appear for the May 22, 2013 he requested.

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. 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 Claimant committed an IPV. Because he has not committed an IPV he is not to be disqualified.

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, Claimant did not receive an OI. He was eligible to receive benefits. Because there is no OI, there is nothing 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 not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. Respondent did not receive an OI of program benefits from the FAP, SER, or MA program.

The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: June 9, 2014

Date Mailed: June 9, 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:

