

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

IN THE MATTER OF:



Reg. No.: 2014-33124
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: August 4, 2014
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 August 4, 2014, from Detroit, 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
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
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
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 April 1, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report criminal disqualifications to the Department.
5. Respondent had 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 January 1, 2013 to October 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,446 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$110 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,336.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 \$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 (May 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 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 alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department of his probation violation status and therefore, was ineligible during the alleged IPV period.

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. BEM 203 (October 2012), p. 1.

For FAP cases, a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203, p. 2. The person is disqualified as long as the violation occurs. BEM 203, p. 2.

A disqualified person is one who is ineligible for FAP because the person refuses or fails to cooperate in meeting an eligibility factor. BEM 212 (November 2012), p. 6. Individuals are disqualified for being a parole and probation violator. BEM 212, p. 7.

The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2013 to October 31, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report his criminal justice disqualification (probation violation status) and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated May 17, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 26-42 and see also application information booklet, pp. 8-25.

Second, the Department presented information about Respondent's probation violation information as of December 23, 2013, which was from the Michigan Department of Corrections (MDOC) Offender Tracking Information System (OTIS). See Exhibit 1, pp. 47-48. The OTIS report indicated that Respondent's status was an absconder from probation as of November 26, 2012. See Exhibit 1, p. 47. Moreover, the Department presented a Front-End Eligibility (FEE) Investigative report, in which the OIG agent contacted the Washtenaw Department of Corrections to confirm Respondent's OTIS report on December 3, 2013. The OIG agent confirmed that Respondent is an absconder and his warrant status was effective November 26, 2012. See Exhibit 1, pp.

49-50. It should be noted that the OTIS report indicated a different birthday year for the Respondent. See Exhibit 1, p. 47. It should also be noted that the Department testified that as of today's hearing, the OTIS report confirms that Respondent is still an absconder.

Third, the Department presented Respondent's redetermination dated March 27, 2013, which was submitted during the alleged fraud period. See Exhibit 1, pp. 43-46. Moreover, Respondent marked "no" to the following questions on the redetermination: (i) is anyone subject to an outstanding felony warrant; (ii) is anyone currently in violation of a probation or parole; and (iii) is anyone fleeing from felony prosecution, fleeing an outstanding felony warrant for their arrest, or jail. See Exhibit 1, p. 46. At the time Respondent completed the Redetermination, he was an absconder from probation as of November 26, 2012. See Exhibit 1, pp. 47 and 49.

Fourth, the Department testified that he spoke to the Respondent on different occasions. On December 3, 2013, the Department spoke to the Respondent regarding the FEE investigation report. See Exhibit 1, pp. 49-50. On December 16, 2013, the Department spoke with Respondent as notated in the OIG report. See Exhibit 1, p. 2. The evidence indicated that Respondent did not know he had a warrant until approximately June or July (2013) when he looked it up on the computer after a friend who was a police officer informed him of the warrant. See Exhibit 1, p. 2 and see Michigan Rules of Evidence 804(b)(3) and 805. Additionally, the Department testified and/or OIG stated that Respondent said the DHS worker should have known of his probation violation and that it was the Department's fault. See Exhibit 1, p. 2 and see Michigan Rules of Evidence 804(b)(3) and 805.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The evidence is sufficient to establish that Respondent was aware of his responsibility to report his criminal justice disqualification and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility.

First, it is harmless error by the Department as to the OTIS report indicating a different birthday year for the Respondent because the Department conducted a collateral contact with the Washtenaw Department of Corrections to confirm Respondent's absconder status on December 3, 2013. See Exhibit 1, pp. 47 and 50.

Second, the Department presented evidence to establish Respondent's intent for the IPV committed. The Department presented Respondent's redetermination dated March 27, 2013, to show that he committed an IPV during the fraud period. See Exhibit 1, pp. 43-46. In the redetermination, Respondent indicated that he is not currently in violation of a probation or parole even though the evidence indicated that he was in violation of his probation at that time. See Exhibit 1, pp. 46 - 50. As such, Respondent committed an IPV of his FAP benefits when he intentionally withheld his criminal justice disqualification information (i.e., marking "no" to the probation and or parole question on the redetermination). See Exhibit 1, pp. 43-46. This would have resulted in the

Respondent being disqualified from the FAP benefits because he was a person who is violating a condition of probation or parole imposed under a federal or state law. BEM 203, p. 2.

Moreover, even though Respondent told the testifying agent that he did not know of his warrant until after he submitted the redetermination, Respondent failed to be present at the hearing to rebut the Department's evidence and testimony. Therefore, the evidence is persuasive to show that the Respondent intentionally withheld information during the fraud period.

In summary, there was clear and convincing evidence that Respondent was aware of his responsibility to report the criminal justice disqualification and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility. The Department has established that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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.

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 (July 2013), 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a one-year disqualification under the FAP program. BAM 720, p. 16.

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. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

As previously stated, Respondent should have been disqualified from the FAP benefits because he was a person who is violating a condition of probation or parole imposed under a federal or state law. BEM 203, p. 2. The evidence indicated that the group size was two (Respondent plus additional group member) during the OI period. Thus, Respondent was overissued FAP benefits for any period that he was disqualified.

Applying OI period begin date policy, it is found that the appropriate OI begin date is January 1, 2013. See BAM 720, p. 7.

In establishing the OI amount, the Department presented benefit summary inquiries showing that Respondent was issued FAP benefits by the State of Michigan from January 2013 to October 2013. See Exhibit 1, pp. 51-52. However, Respondent was entitled to \$110 in FAP benefits for September 2013 to October 2013. See Exhibit 1, p. 51. As such, the Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,336 for the time period of January 1, 2013 to August 31, 2013. After excluding Respondent as a group member, the overissuance was established to be \$1,336 in FAP benefits. See Exhibit 1, pp. 2 and 51-52. Thus, the Department is entitled to recoup \$1,336 of FAP benefits for the time period of January 1, 2013 to August 31, 2013. See also RFT 260 (December 2012), p. 1.

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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$1,336 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$1,336 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA
 12 months. 24 months. lifetime



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 13, 2014

Date Mailed: August 13, 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.

EJF/cl

cc:

