

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

IN THE MATTER OF:



Reg. No.: 2014-35000
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: June 12, 2014
County: Midland

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 12, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent appeared and testified.

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 prove by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP benefits?

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 [REDACTED], to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] through [REDACTED]. (fraud/OI period).
4. Respondent was a recipient of FAP benefits issued by the Department.
5. Respondent received sentences for drug offenses that occurred on [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
6. Respondent was sentenced for the [REDACTED] and [REDACTED] convictions on [REDACTED].
7. 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 , p. 10.

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, 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, the Department alleged a fraud period of [REDACTED] through [REDACTED] in which Respondent failed to report felony drug convictions dated after August 22, 1996. The Department presented an application dated [REDACTED], which shows that Respondent, or someone for her, checked “No” to the question, “Has anyone ever been convicted of a drug-related felony after August 22, 1996.?” Exhibit 1, p. 26) Respondent testified credibly that she was assisted by a Department worker at the time of application, and when the worker asked her about the possible convictions, Respondent was not sure of the answer, so the “no” box was checked.

A review of the OTIS report shows that Respondent was not sentenced on the two offenses that occurred in [REDACTED] until [REDACTED]. No conviction date was given for these offenses in the OTIS report. All other offenses either occurred prior to August 22, 1996 or after the date of the application (and after the alleged fraud period.) Therefore, at the time of the application in [REDACTED], Respondent was likely correct in her response of “no” to the question regarding **convictions** of drug-related felonies. (Emphasis added.)

The standard for IPV is proof by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Based on the above discussion, it is concluded that the Department did not establish by clear and convincing evidence that Respondent committed an IPV.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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, 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 established that Respondent committed an IPV. Therefore, Respondent is not disqualified from receiving FAP benefits due to an IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 725, p. 1.

BEM 203 (10/2011) instructs regarding FAP benefits: “An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified if both **offenses occurred** after August 22, 1996.” (Emphasis added.)

In this case, the alleged fraud/OI period is [REDACTED] through [REDACTED], [REDACTED]

The Department presented an MDOC Offender Tracking Information System (OTIS) report showing that Respondent was sentenced for controlled substance offences. The offenses occurred on:

██████████ (after fraud/OI period)
██████████ (after fraud/OI period)
██████████ (after fraud/OI period)
██████████ (prior to August 22, 1996)

██████████ (Sentenced on March 4, 2013; no conviction date given)
██████████ (Sentenced on March 4, 2013; no conviction date given)

Thus, according to the above policy, since no conviction date was given in OTIS for the only two qualifying offenses in ██████████, the Department did not substantiate that Respondent should have been disqualified from receiving FAP benefits.

Furthermore, BEM 203 (10/2012) instructs regarding FAP benefits:

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. (Emphasis added.)

Example: Matthew Doe was found to have convictions for the use of a controlled substance on April 1, 2012 and for the distribution of a controlled substance on April 1, 2012. This would count as one conviction since it is on the same day. Policy for the 1st offense for a drug-related felony will be followed.

Although the two ██████████ offenses occurred after August 22, 1996, the conviction date is unclear from the OTIS report; a sentence date is given, but that is not necessarily the conviction date. The conviction date may have been prior to the sentence date, but it could not have been after the sentence date, so for purposes of determining an OI, the sentence date could be used as the conviction date. The sentence date for both ██████████ offenses was ██████████, thus counting as one conviction. Therefore, Respondent would not have been permanently disqualified from receiving FAP benefits, as of ██████████. Most important in this discussion is that the Department did not provide conviction dates for review.

The Department has not presented sufficient evidence that Respondent received an OI in FAP benefits.

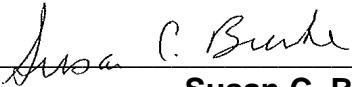
DECISION AND ORDER

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 IPV.

2. Respondent did not receive an OI of FAP program benefits.

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



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 6/27/2014

Date Mailed: 6/27/2014

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.

SCB/hw

cc:

