

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

IN THE MATTER OF:

██████████
████████████████████
██████████

Reg. No.: 2014-35139
Issue No(s): 3005
Case No.: ██████████
Hearing Date: July 24, 2014
County: Genesee (02)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 July 24, 2014 from Detroit, Michigan. The Department was represented by ██████████, 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)?

Should Respondent be disqualified from receiving Food Assistance Program (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 April 24, 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. On January 2, 2013, Respondent completed an application for FAP benefits which advised her of her responsibility to report changes in circumstances, such as violations of probation.
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 April 1, 2013 through February 28, 2014 (fraud period).
7. During the fraud period, Respondent was issued \$2,156.00 in FAP 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 \$2,156.00.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 (February 2013), 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 (February 2013), 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 alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department of her absconder status with the Michigan Department of Corrections (MDOC). A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified as long as the violation occurs. BEM 203 (October 1, 2012), pg. 2. At the hearing, the Department established that Respondent had been in absconder status since March 28, 2013. While this evidence may be sufficient to establish that Respondent received benefits in which she was not entitled, to establish an IPV the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on January 2, 2013 in which Respondent acknowledged that she had received the Information Booklet advising her regarding Things You Must Do which explained reporting changes in circumstances. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits. At the time Respondent completed the application, she was not in absconder status. The Department did not present any evidence that Respondent reapplied for Michigan issued FAP benefits while in absconder status or that she affirmatively communicated false information to the Department. Accordingly, it is found that the Department failed to establish that Respondent committed an IPV relating to FAP benefits received from April 1, 2013 through March 28, 2014.

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 (October 2009), 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. 13.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

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 Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident.

The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (February 2013), p. 5; BAM 705 (February 2013), p. 5. At the hearing, the Department established that the State of Michigan issued a total of \$2,156.00 in FAP benefits to Respondent from April 1, 2013 through February 28, 2014. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

In support of its contention that Respondent was overissued FAP benefits, the Department presented information from the MDOC which listed Respondent as an absconder since March 28, 2013. The Department confirmed Respondent's absconder status by speaking directly to her probation officer. As previously stated, a person in violation of parole or probation is not entitled to FAP benefits. Therefore, the Department has established it is entitled to recoup the \$2,156.00 in FAP benefits it issued to Respondent between April 1, 2013 and February 28, 2014.

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. The Department has established by clear and convincing evidence that Respondent received an OI of program benefits in the amount of \$2,156.00 from the FAP program for the period of April 1, 2013 through February 28, 2014.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,156.00 in accordance with Department policy.



JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 12, 2014

Date Mailed: August 12, 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.

JAM/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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