

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

IN THE MATTER OF:

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

Reg. No.: 2014-35257
Issue No(s): 3005
Case No.: ██████████
Hearing Date: September 3, 2014
County: Macomb (50-20)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 September 3, 2014, from Detroit, Michigan. The Department was represented by ██████████
████████████████████ 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 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 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 April 29, 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. Respondent was aware of the responsibility to report income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department alleges that from June 1, 2012, to November 30, 2012, Respondent was issued \$1,200 in FAP benefits by the State of Michigan and was entitled to \$80 in such benefits during this time period.
7. The Department alleges that Respondent received an FAP OI in the amount of \$1,120.
8. This was Respondent's first alleged FAP IPV.
9. 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 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 concerning his FAP benefits because he failed to report his employment income. In support of its case, the Department presented (i) the online application Respondent submitted on March 15,

2012; (ii) the employee wage statement Respondent's employer, [REDACTED] (Employer), submitted in response to the Department's request showing the dates and amounts of employment income issued to Respondent; (iii) the employee information sheet Respondent completed and provided to Employer on March 26, 2012; and (iv) a benefit summary inquiry showing the monthly FAP benefits issued to Respondent between June 1, 2012, and November 30, 2012.

The evidence presented shows that Respondent was employed by Employer beginning March 26, 2012, and received his first paycheck on April 6, 2012. The Department testified that the income was discovered by the Department in 2014 after it ran a consolidated wage inquiry, a database search that allows the Department access to employer-reported income information reported to the State on a quarterly basis, in connection with Respondent's ongoing benefit case with the Department. The Department further testified that there was no evidence on file that Respondent ever reported this income to the Department. The fact that the Department obtained verification of Respondent's pay information directly from Employer further supported the Department's position that Respondent did not report the income. The evidence presented is sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information concerning his employment for the purpose of maintaining or preventing reduction of FAP eligibility.

Thus, the Department has established that Respondent committed an IPV of his FAP benefits.

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 (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 an FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department established that Respondent committed an FAP IPV. Because this was Respondent's first IPV, he is subject to a one-year disqualification from the FAP program.

Overissuance

When a client group receives more benefits than it is 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 client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$1,200 for the period from June 1, 2012, to November 30, 2012, but he was eligible for only \$80 in FAP benefits during this period. The Department presented evidence supporting the issuance of \$1,200 in FAP benefits to Respondent between June 1, 2012 and November 30, 2012. Based on the 10-day reporting period, the 10-day processing period and the 12-day negative action period, and in consideration of Respondent's receipt of his first paycheck on April 6, 2012, the OI period properly began June 1, 2012. BAM 105, p. 7; BAM 720, p. 7.

To establish the OI amount, the Department presented FAP OI budgets for each month between June 2012 and November 2012 showing the FAP benefits Respondent was eligible to receive if his income had been included in the calculation of his FAP eligibility for each month. A review of each of the budgets shows that the Department properly considered Respondent's actual income from Employer for each month at issue. BAM 720, p. 10. Because Respondent did not timely report his income, he was not eligible for the earned income deduction. BAM 720, p. 10. Based on his employment income, Respondent was eligible to receive only \$16 for each of the months between June 2012 and October 2012. RFT 255 (October 2011), pp. 8, 9, 10, 11, 13. Based on his gross employment income for November 2012, Respondent was ineligible for any FAP benefits in November 2012. RFT 250 (October 2012), p. 1. Therefore, Respondent was eligible to receive a total of \$80 in FAP benefits for June 2012 to November 2012. As such, he was overissued \$1,120 in FAP benefits during this time, the difference between the \$1,200 in total FAP benefits issued to him between June 2012 and November 2012 and the \$80 he was eligible to receive those months.

Thus, the Department is entitled to recoup and/or collect from Respondent \$1,120 in FAP benefits issued to him from June 2012 to November 2012.

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$1,120.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$1,120 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 10, 2014

Date Mailed: September 10, 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.

ACE/pf

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