

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002626
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 02, 2014
County: Washtenaw (District 20)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on December 2, 2014, from Ypsilanti, Michigan. The Department was represented by Dustin Drabek, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED], the Respondent, [REDACTED], daughter, and [REDACTED], Attorney.

Hiba Al-Shehmani also provided interpretation services.

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 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 May 13, 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 not aware of the responsibility to not use FAP benefits for hot food items.
5. Respondent had an apparent physical or mental impairment that would limit her understanding or ability to fulfill FAP responsibilities.
6. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2010, through August 30, 2012, (fraud period).
7. During the fraud period, Respondent utilized \$2,095 in FAP benefits at the specific store at issue for this IPV.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,095.
9. This was Respondent's first alleged IPV.

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 (5-1-2014), 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 (5-1-2014), 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 OIG Agent testified that the sole allegation for this IPV is the purchase of “hot foods” with FAP benefits. Further, recoupment of the entire amount of FAP benefits utilized at this store during the fraud period was sought because after an interview with Respondent, the Department was unable to determine how much of the FAP benefits were used for the alleged purchase of “hot foods” and how much were used to purchase eligible food items.

The Department did not provide sufficient evidence that Claimant was aware that FAP benefits cannot be used to purchase hot food items. The OIG Agent acknowledged that there is nothing in the documentary record that tells a FAP recipient that hot food items cannot be purchased with FAP benefits. Rather, the OIG Agent testified this prohibition can be found in federal guidelines. 7 U.S.C. 2012 (k) (1) defines food as any food or food product for home consumption except alcoholic beverages, tobacco, hot foods or hot food products ready for immediate consumption other than those authorized pursuant to clauses (3), (4), (5), (7), (8), and (9) of this subsection, and any deposit fee in excess of the amount of the State fee reimbursement (if any) required to purchase any food or food product contained in a returnable bottle or can, regardless of whether the fee is included in the shelf price posted for the food or food product. However, the OIG Agent testified he could not say if the Department worker gave information to Claimant that FAP benefits cannot be used to purchase hot food items.

Claimant testified she was unaware that she was using the FAP card in any way that was against laws. Claimant explained that she purchased some prepared food items, but was never told this was not allowed. Claimant stated items like chicken kabobs had been cooked, but were cold when she bought them as packaged in the cooler at the store. Claimant stated that understood she could not use FAP benefits for household items, like shampoo and cleaners. Claimant also provided testimony regarding many types of FAP eligible food items purchased at this store.

Further, Claimant provided testimony about her very limited education. In her primary language, Claimant can only read a little and writing is very hard. Claimant does not read English and speaks very little English. Claimant also testified she is on medication for severe depression.

Lastly, Claimant's daughter testified that she filled out the Department paperwork, such as the FAP application and redetermination forms, for her mother because Claimant could not read. With the FAP application, they turned the entire booklet back into the Department and did not read through or keep the informational pages that the application portion is designed to be separated from. Claimant's daughter also stated she or Claimant's son participated in interviews with the Department to help Claimant and that the former Department case worker was aware that Claimant cannot read.

Overall the evidence does not establish that Claimant committed an IPV. The Department's documentation does not show that FAP recipients, including Claimant, are told hot food items cannot be purchased with FAP benefits. Claimant credibly testified she was not aware of this restriction. Claimant credibly testified the prepared food items were cold when she purchased them. Claimant also has an apparent physical or mental impairment that limits her understanding or ability to fulfill responsibilities for utilizing FAP benefits.

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. 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 (7-1-2013), 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 evidence did not establish that Claimant committed an IPV. Therefore, Claimant cannot be disqualified from receiving program benefits.

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, the Department's evidence does not establish that Claimant utilized the alleged \$2,095 in FAP benefits to purchase ineligible food items. Further, the evidence was not sufficient to show what amount of FAP benefits, if any, were used to purchase ineligible hot food items.

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 program benefits in the amount of \$2,095 from the FAP following program.

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



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/12/2015**

Date Mailed: **2/12/2015**

CL/jaf

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

