

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

IN THE MATTER OF:

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Reg. No.: 14-013959
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 6, 2015
County: CALHOUN (DISTRICT 21)

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 April 6, 2015, 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)?
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 October 21, 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 his criminal disqualifications to the Department.
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's OIG indicates that the time period it is considering the FAP fraud period is June 1, 2013 to June 30, 2014 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
9. This was Respondent's first alleged IPV.
10. 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 \$500 or more, **or**
 - the total OI amount is less than \$500, **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 (October 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.

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. BEM 203 (June 2013), 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. 1. The person is disqualified as long as the violation occurs. BEM 203, p. 1.

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.

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 (absconder from parole) and therefore, was ineligible during the alleged IPV period.

First, the Department presented Respondent's application dated November 7, 2012, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 11-42.

Second, the Department presented evidence that Respondent was considered an absconder in May 2013 after failing to comply with several terms of his parole. See Exhibit 1, pp. 43-44 and 49-51. The Department indicated that a warrant was issued for his arrest and the parole agent made several attempts to locate Respondent. See Exhibit 1, pp. 43-44 and 49-51.

Third, the Department presented Respondent's redetermination dated September 27, 2013, which was submitted during the alleged fraud period. See Exhibit 1, pp. 45-48. In the redetermination, Respondent marked "no" to the question if whether he currently in violation of probation or parole, even though the Department presented evidence in which he was in violation of probation or parole. See Exhibit 1, pp. 43-44, 48, and 49-51.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The Department presented evidence to establish Respondent's intent for the IPV committed. The Department presented Respondent's redetermination dated September 27, 2013, to show that he committed an IPV during the fraud period. See Exhibit 1, pp. 46-48. 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. 43-44, 48, and 49-51. As such, 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. See BEM 203, p. 2. The evidence indicated that the group size was one during the OI period. See Exhibit 1, p. 46. 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 June 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 June 2013 to June 2014 totaling ██████. See Exhibit 1, pp. 52-53. Thus, the Department is entitled to recoup ██████ of FAP benefits for the time period of June 1, 2013 to June 30, 2014.

