

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004956
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2015
County: Isabella

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, an in-person hearing was held on April 15, 2015, in Mt. Pleasant, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent personally 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 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 June 26, 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 signed an Assistance Application (DHS-1171) on March 28, 2011, acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him. (Dept. Ex A, pp 12-39).
5. On July 15, 2014, the Department received information from [REDACTED] showing Respondent was incarcerated from December 4, 2011, through August 3, 2012. (Dept. Ex A, p 40).
6. Respondent received \$ [REDACTED] in FAP benefits from the State of Michigan during the fraud period of January 1, 2012, through June 30, 2012. If Respondent had properly reported that he was incarcerated, Respondent would have been entitled to receive \$0 in FAP benefits. (Dept. Ex A, p 3).
7. Respondent failed to report his incarceration in a timely manner, resulting in a FAP overissuance of \$ [REDACTED] for the fraud period of January 1, 2012, through June 30, 2012.
8. Respondent was clearly instructed and fully aware of the responsibility to report all changes to the Department within 10 days.
9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
10. This was Respondent's first alleged IPV.
11. 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 and Nutrition Act of 2008, 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, p 12 (10/1/2014).

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 (10/1/2014), 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.

On December 13, 2013, the Department received notice from the [REDACTED] [REDACTED] that Respondent had been incarcerated from December 4, 2011, through August 3, 2012. The Department had no record of Respondent notifying the Department of his incarceration. (Dept. Ex A, p 40).

By signing the March 28, 2011, Assistance Application, Respondent acknowledged he was aware he could be prosecuted for fraud and be required to repay the amount wrongfully received and that he must report all changes within 10 days of the change.

Disqualification

A court or hearing decision that finds a client committed an 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 13. 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, this is Respondent's first IPV.

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.

Evidence shows Respondent received \$ [REDACTED] in FAP benefits from January 1, 2012, through June 30, 2012. Had Respondent properly reported his incarceration he would have been eligible to receive \$0 in FAP benefits. Hence, he received an overissuance of \$ [REDACTED] in FAP benefits for the fraud period.

Respondent testified that while he was incarcerated, his roommate used his FAP benefits, and had since been found guilty, sentenced and ordered to pay restitution for the misuse of Respondent's FAP card. However, based on a review of the evidence presented, this Administrative Law Judge finds Respondent's testimony less than credible.

Respondent submitted a Register of Actions for his roommate showing the roommate did plead guilty to False Pretenses for more than \$200 but less than \$1,000 and was ordered to pay restitution to the State of Michigan in the amount of \$ [REDACTED]. Respondent stated that this Register of Actions proved that his roommate used his FAP benefits and restitution has already been ordered to be paid. However, Respondent's FAP benefits totaled \$ [REDACTED] which is over the \$1,000 his roommate was charged with, and the restitution to the State of Michigan was only \$ [REDACTED] not \$ [REDACTED]. Therefore, this Administrative Law Judge does not find the Register of Actions supports Respondent's claim that his roommate used his FAP benefits.

While the evidence is clear that the \$ [REDACTED] in FAP benefits was used while Respondent was incarcerated, the user of the benefits would have had to have known Respondent's PIN number. Since Respondent's argument that it was his roommate who used his benefits fails, it would appear Respondent gave his FAP benefit card and PIN to another person who used Respondent's FAP card while he was incarcerated.

According to Departmental policy, misuse of food benefits is a violation of state and federal laws. Clients are instructed not to give away their PIN number or Michigan Bridge Card. Since Respondent's Bridge Card containing his FAP benefits was used with Respondent's PIN number, this Administrative Law Judge finds Respondent gave the PIN number to someone who had access to Respondent's Bridge Card which allowed that person to use Respondent's FAP benefits while Respondent was incarcerated.

In this case, the Department has shown by clear and convincing evidence that Respondent received an OI of benefits. The OI was due to Respondent failing to timely report his incarceration. According to BAM 700, the Department may recoup this OI.

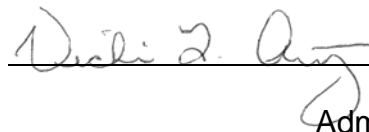
DECISION AND ORDER

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 did receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/30/2015**

Date Mailed: **4/30/2015**

VLA/las

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

