

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

IN THE MATTER OF:

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Reg. No.: 14-013729
Issue No.: 3005
Case No.: ██████████
Hearing Date: May 11, 2015
County: JACKSON

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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, a telephone hearing was held on May 11, 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) 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 October 18, 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 changes in residence/group composition.
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 July 2, 2012 to November 30, 2012 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████
9. This was Respondent's second 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.

- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total 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; ASM 165 (May 2013), pp. 1-7.

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.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (May 2012), p. 5. Spouses who are legally married and live together must be in the same group. BEM 212 (April 2012), p. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

In this case, the Department argued that it was in contact with Respondent's probation officer who verified that during the alleged fraud period, Respondent resided with his wife and children (total group size of four). See Exhibit 1, p. 1. As such, the Department alleges that Respondent committed an IPV of his FAP benefits because he provided fraudulent information at application regarding his place of residence and group composition. See Exhibit 1, pp. 1 and 3.

First, the Department presented Respondent's application dated July 2, 2012. See Exhibit 1, pp. 10-26. In the application, Respondent reported that his household size is one. See Exhibit 1, p. 11. However, the Department argued that Respondent's household size is four as he allegedly resided with his spouse and children.

Second, the Department presented Respondent's spouse application dated October 23, 2012. See Exhibit 1, pp. 27-61. In the application, Respondent's spouse reported that the household size is three (spouse plus two children). See Exhibit 1, pp. 31- 33. The spouse did not include Respondent as part of the household. See Exhibit 1, p. 34. It should be noted that Respondent's spouse indicated that she is separated, but not divorced. See Exhibit 1, p. 31.

Third, the Department presented verification from Respondent's probation officer reporting that the Respondent had been residing with his wife since his release from jail on June 28, 2012. See Exhibit 1, pp. 63-64 (e-mail dated October 31, 2012). As such, the Department argued that Respondent's FAP group size should have been four (Respondent, spouse, and their two children). It should be noted that there appears to be a notation from a DHHS caseworker in which the worker spoke to the spouse. See Exhibit 1, p. 63. The spouse appeared to indicated that Respondent lied to his probation officer as to his residence. See Exhibit 1, p. 63.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. In this case, the Department presented Respondent's and his spouse's applications in which neither individual reported one another in the household, even though the evidence established that Respondent, his wife, and two children, resided with one another since his release from jail on June 28, 2012. See Exhibit 1, pp. 11-15, 29-34, and 63-64. This is persuasive evidence that Respondent committed an IPV of his FAP benefits because he intentionally withheld or

misrepresented his group composition/residence information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility. It should be noted that the spouse appeared to indicate that Respondent lied to his probation officer as to his residence. See Exhibit 1, p. 63. However, Respondent was not present for the hearing to rebut the evidence, which showed there was clear and convincing evidence that Respondent was aware of the responsibility to report his group composition/residence information and that he intentionally withheld or misrepresented his income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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

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 24-month disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits.

Applying the OI begin date policy, it is found that the Department applied the appropriate OI begin date of July 2, 2012 (application date). BAM 720, p. 7 and Exhibit 1, pp. 10-26.

Additionally, 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.

Additionally, this OI amount involves two or more FAP groups. When the OI involves two or more FAP groups which should have received benefits as one group, the Department determines the amount by:

- Adding together all benefits received by the groups that must be combined, and
- Subtracting the correct benefits for the one combined group.

BAM 720, p. 8.

In regards to Respondent's FAP benefits, the Department presented OI budgets for the time period of July 2012 to November 2012. See Exhibit 1, pp. 77-87. A review of the OI budgets found them to be fair and correct, except for July 2012. This Administrative Law Judge (ALJ) was unable to determine how the Department budgeted ██████ in Retirement, Survivors, and Disability Insurance (RSDI) and ██████ Supplemental Security Income (SSI) for the Respondent in July 2012. See Exhibit 1, p. 79. It appears that the Department should have only budgeted ██████ in RSDI income for Respondent based on his State Online Query (SOLQ). See Exhibit 1, pp. 65-67. Thus, the OI amount of ██████ for July 2012 is subtracted from the total OI amount sought, resulting in a total OI amount of ██████3. Policy allows the OIG to pursue an IPV when the total amount is less than \$500 and the group has a previous IPV. See BAM 720, p. 12. The evidence established that Respondent has one previous IPV (see Exhibit 1, p. 91); therefore, the Department is entitled to recoup ██████ for the time period of August 1, 2012 to November 30, 2012. See BAM 720, pp. 8-12.

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 program benefits in the amount of ██████ from the following FAP benefits.

The Department is ORDERED to reduce the OI to ██████ for the period August 1, 2012 to November 30, 2012, and initiate recoupment/collections procedures in accordance with Department policy.

