

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

IN THE MATTER OF:



Reg. No.: 15-003634
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: May 19, 2015
County: Wayne (76) Gratiot/7 Mile

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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, a telephone hearing was held on May 19, 2015, from Lansing, Michigan. The Department was represented by LaChaunda Walker, 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 March 15, 2015, 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 group 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's OIG indicates that the time period it is considering the fraud period is September 1, 2011 through January 31, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$984.00.
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 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 [REDACTED] 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 (10/1/14), p. 14; ASM 165 (5/1/13), p. 4.

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 (5/1/14), 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, Respondent completed an Application on August 9, 2011. (Exhibit A Pages 13-30.) At the time, he reported that he was not employed and had no income.

The Department later became aware that Respondent had begun employment with Metropolitan Baking Company on July 20, 2011. (Exhibit A Pages 11-12.) He was still employed as of January 7, 2012, working approximately 40 hours per week at [REDACTED] per hour. His former employer provided information regarding his weekly income in January 2012, and he had earned [REDACTED] in the first two weeks. Respondent never reported his income to the Department. Although the employer did not provide a weekly or even monthly breakdown of Respondent's wages, the Department submitted evidence (Exhibit A Page 48) that he had earnings from Metropolitan Baking Company of \$5,399.73 in the third quarter of 2011 (Q3 2011), \$6,204.08 in the fourth quarter of 2011 (Q4 2011), and [REDACTED] in the first quarter of 2012 (Q1 2012). With three months in each quarter his average monthly earnings in Q3 2011 were [REDACTED] in Q4 2011 were [REDACTED] and in Q1 2012 were [REDACTED]. The Department calculated his earnings in September 2011 (Exhibit A Page 36) at [REDACTED], based upon weekly earnings reflected on Exhibit A Page 37. The Department did not explain how it established those weekly wages. Similarly, for October 2011 (Exhibit A Pages 38-39) it said he earned [REDACTED], [REDACTED] in November 2011 (Exhibit A Pages 40-41), and [REDACTED] in December 2011 (Exhibit A Pages 42-43.) For those three months it provided weekly wages. The monthly amounts are consistent as a whole with the quarterly amounts and are therefore found to be reliable.

Respondent's FAP benefits are reflected in Exhibit A Page 33-34. At Pages 36-46 the Department has submitted its calculations where it determined the OI for the months of September 2011 through January 2012.

The evidence is clear and convincing that Respondent committed an IPV. He withheld from the Department material information regarding his employment and income. He was instructed that changes in employment must be reported but he failed to do so. Because of his failure to report, he received excess benefits.

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, p. 15; BEM 708 (4/1/14), 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, Respondent committed an IPV. This is his first IPV in the FAP program. He will be disqualified for a period of 12 months.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In Exhibit A, the Department provided recalculated budgets to show how much Respondent received in FAP, and how much he would have received if his income had been known. For the months of December 2011 through May 2012, Respondent received [REDACTED] FAP. The budgets indicate he should have received [REDACTED] in those months. Consequently he received an OI of [REDACTED]

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 \$984.00 from the FAP program.

The Department is ORDERED to initiate recoupment/collection 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.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/21/2015**

Date Mailed: **5/21/2015**

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

cc:

[REDACTED]

OIG

[REDACTED]

Wayne-District 76 (Gratiot/7 Mile)

[REDACTED]

D. Johnson
MAHS