

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-016539
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 15, 2015
County: MONROE

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 three-way telephone hearing was held on June 15, 2015, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: Respondent, ██████████.

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 November 27, 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 her criminal disqualification to the Department.
5. The Department's OIG indicates that the time period it is considering the FAP fraud period is June 1, 2011 to January 1, 2014 (fraud period).
6. 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 \$0 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
8. This was Respondent's first alleged IPV.
9. 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 or CDC provider 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 (January 2009 and July 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, pp. 1-2. The person is disqualified as long as the violation occurs. BEM 203, p. 2. 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 (September 2010 and October 2013), pp. 6 and 8. Individuals are disqualified for being a parole and probation violator. BEM 212, pp. 6-8.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department of her probation violation and therefore, was ineligible during the alleged IPV period.

First, the Department presented Respondent's applications dated September 19, 2008 and October 29, 2010, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 10-41.

Second, the Department presented evidence that Respondent was considered an absconder from probation from May 10, 2011 to January 2014. See Exhibit A, pp. 42-46.

Third, the Department presented Respondent's multiple redeterminations submitted during the alleged fraud period in which Respondent marked "no" to the question if whether anyone is in violation of probation or parole. See Exhibit A, pp. 47-64.

At the hearing, Respondent argued that she did not intentionally defraud the Department. Based on Respondent's testimony, it appeared that she would be under probation for approximately one to two years. Respondent testified that she was allowed to report to the probation department via an automated telephone information system. Respondent testified that she would also send a money order, which was a fee for using this form of reporting method.

Then, Respondent testified that she conducted this form of reporting for approximately six months to one-year, which she indicated was during the alleged fraud/OI period. On or around the seventh month or sometime after, Respondent testified that she attempted to report; however, the automated telephone system indicated she was no longer on the probation list. In fact, Respondent testified that her money orders were returned to her. At this point, Respondent testified that she believed she was no longer on probation and was the reason why she marked "no" on the redeterminations to the question if whether she is in violation of probation or parole. Then, in May 2014, Respondent and her significant other were pulled over for a traffic stop and she testified that she was arrested due to an outstanding warrant. At this point, Respondent testified that she discovered she was still on probation due to the outstanding warrant.

In response, the Department provided an e-mail from Respondent's current probation officer, which stated the following: (i) her bench warrant was for failing to complete community service work and failing to pay; (ii) her classification was changed to

“absconder” once she stopped reporting to the Probation Department as a result of the warrant; (iii) she was advised of her warrant status and directed to get in touch with her agent to resolve the matter; and (iv) she never made contact and did not return to supervision until May 2014 due to the traffic stop. See Exhibit A, p. 45.

Additionally, prior to this disqualification hearing, the OIG agent testified that she spoke to the Respondent when she received the hearing packet. See Exhibit A, p. 2. The OIG agent testified that Respondent’s testimony in this hearing was similar to the conversation that took place with the OIG agent. After the conversation, the OIG agent testified that she contacted Respondent’s probation officer. The OIG agent testified that she informed the probation officer about the conversation she had with the Respondent. The OIG agent testified that the probation officer indicated that Respondent’s testimony regarding the automated telephone system was possible; however, also indicated that Respondent was advised of the outstanding warrant and she never made contact with the probation department.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. The undersigned finds Respondent’s testimony credible that she did not intentionally withhold her criminal justice disqualification for the purpose of maintaining Michigan FAP eligibility. The undersigned finds Respondent’s testimony credible that she believed she was no longer on probation when the automated telephone system no longer recognized her as being on probation. Respondent’s credibility is supported by her similar testimony provided to the OIG agent as well as the probation officer indicating that Respondent’s testimony was possible. It should be noted that Respondent sought to have two witnesses, her probation officer and mental health therapist; thus, the undersigned made attempts to contact both witnesses via telephone, but to no avail.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her criminal justice disqualification for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP 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, 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not disqualified from FAP benefits for 12 months. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent committed an IPV. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

The evidence is sufficient to show that a client error is present in this situation. See BEM 203, pp. 1-2 and BAM 715, p. 1. The evidence is persuasive to show that Respondent was in violation of her probation during the OI period and policy states that a person is disqualified as long as the violation occurs. See BEM 203, p. 2. As such, Respondent was not eligible for FAP benefits during the OI period.

Applying the client error OI period standard, the Department properly determined that the OI period began on June 1, 2011. See BAM 715, pp. 4-5 and Exhibit A, pp. 42-46.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from June 2011 to January 2014, which totaled [REDACTED]. See Exhibit A, pp. 65-70. However, the Department's OIG report indicated the total OI amount sought is [REDACTED]. See Exhibit A, p. 3. A subsequent review of Respondent's benefit summary inquiry found that the Department included the benefit months of February 2014 and March 2014. See Exhibit A, p. 70. The Department failed to include February 2014 to March 2014 as part of the OI period as well as provide notice to the Respondent that those months were included in the OI amount. See Exhibit A, pp. 4-5 and BAM 720, p. 7 (OI period begin and end date policy). Thus, the Department is only entitled to recoup \$6,367 of FAP benefits it issued to Respondent from June 2011 to January 2014.

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.

