

**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.: 14-017400
Issue No.: 3005; 4005
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 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). 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) and State Disability Assistance (SDA) 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 and SDA benefits?

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 December 11, 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/SDA benefits issued by the Department.
4. Respondent was aware of the responsibility to report her criminal disqualification 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 April 1, 2011 to December 31, 2013 (fraud period).
7. The Department's OIG indicates that the time period it is considering the SDA fraud period is May 1, 2013 to December 31, 2013 (fraud period).
8. During the fraud period, Respondent was issued [REDACTED] in FAP/SDA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP/SDA benefits in the amount of [REDACTED].
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 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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as

the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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, May 2013, and July 2013), p. 1. For FAP and Family Independence Program (FIP) cases, a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203, p. 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, November 2012, and October 2013), p. 6. Individuals are disqualified for being a parole and probation violator. BEM 212, pp. 6-7.

In this case, the Department alleges that Respondent committed an IPV of her FAP/SDA 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 evidence that Respondent was considered an absconder from probation from March 7, 2011 to December 2013. See Exhibit A, pp. 11-15 and 56-57.

Second, the Department presented Respondent's multiple applications throughout the alleged FAP/SDA fraud period in which Respondent marked "no" to the question if anyone is in violation of probation or parole. See Exhibit A, pp. 16-55 and 58-102.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of her FAP benefits only; however, there is no IPV or OI amount present for Respondent's SDA benefits.

First, policy clearly states that for FAP and FIP cases only, a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203, p. 2. The person is disqualified as long as the violation occurs. BEM 203, p. 2. However, this policy section does not list SDA cases in which a person can also be disqualified based on a probation or parole violation. See BEM 203, p. 2. Thus, the

Department cannot seek an IPV or OI against Respondent's SDA benefits based on a probation/parole criminal disqualification. See BEM 203, p. 2.

Second, the Department presented evidence to establish Respondent's intent for the IPV committed. The Department presented Respondent's multiple applications to show that she committed an IPV during the fraud period. See Exhibit A, pp. 16-55 and 58-102. In the applications, Respondent indicated that she is not currently in violation of a probation or parole, even though the evidence indicated that she was in violation of her probation at that time. See Exhibit A, pp. 11-102. As such, Respondent committed an IPV of her FAP benefits when she intentionally withheld her criminal justice disqualification information, which would have resulted in the Respondent being disqualified from her FAP benefits. See BEM 203, p. 2. In summary, there was clear and convincing evidence that Respondent was aware of her responsibility to report her criminal justice disqualification and that she 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 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 disqualified from FAP benefits for 12 months. BAM 720, p. 16. As stated above, Respondent is not subject to a SDA disqualification as the probation/parole violator policy is only applicable to FAP and FIP cases. See BEM 203, p. 2.

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 her FAP benefits due to the criminal justice disqualification. See BEM 203, p. 2. Applying OI period begin date policy, it is found that the appropriate OI begin date is April 1, 2011. See BAM 720, p. 7.

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 April 2011 to December 2013, which totaled [REDACTED]. See Exhibit A, pp. 103-108. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from April 1, 2011 to December 31, 2013.


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 [REDACTED] from the FAP benefits.

The Department is ORDERED to:

- 1) delete the SDA OI and cease any recoupment against Respondent's SDA benefits;
- 2) initiate recoupment/collection procedures for the FAP OI amount of [REDACTED] in accordance with Department policy; and
- 3) Respondent be disqualified from FAP for a period of **12 months**.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: June 16, 2015

Date Mailed: June 16, 2015

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