

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

IN THE MATTER OF:

████████████████████
████████████████████
██

Reg. No.: 15-000117
Issue No.: 3005; 5006
Case No.: ██████████
Hearing Date: April 6, 2015
County: CALHOUN (DISTRICT 21)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on April 6, 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 Emergency Relief (SER)?
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 January 2, 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/SER benefits issued by the Department.
4. Respondent was aware of the responsibility to report her criminal disqualifications 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 July 1, 2010 to July 31, 2014 (fraud period).
7. The Department's OIG indicates that the time period it is considering the SER OI period is December 1, 2011 to February 14, 2014 (fraud period).
8. During the fraud period, Respondent was issued \$ [REDACTED] in FAP/SER 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/SER benefits in the amount of \$ [REDACTED].
10. This was Respondent's second alleged IPV. See Exhibit 1, p. 116.
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 Stamp Act of 1977, 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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

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 (October 2014), pp. 12-13

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.

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. BEM 203 (January 2009), p. 1.

A fugitive felon is a person who:

- Is subject to arrest under an outstanding warrant arising from a felony charge against that person (this includes persons charged with felony welfare fraud who fail to appear in court).
- Is subject to arrest under an outstanding warrant for extradition arising from a criminal charge against that person in another jurisdiction.
- Admits to being a fugitive felon.

BEM 203, p. 1. Answer Yes to the appropriate fugitive felon question(s) in the Department's system if client admits they are a fugitive felon, or you receive information and a written statement from a law enforcement officer, prosecuting attorney or OIG that:

- The person is a fugitive felon, and
- Locating or apprehending the person is within the officer's official duties.

BEM 203, pp. 1-2. The Department will disqualify the individual for this reason as long as he or she is subject to arrest under an outstanding warrant. BEM 203, p. 2.

Also, 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department of her fugitive felon status (outstanding felony warrant) and therefore, was ineligible for benefits during the alleged IPV/OI period.

First, the Department presented evidence that Respondent was in fugitive felon status after she failed to appear for her sentencing and a bench warrant was issued for her arrest on June 29, 2010. See Exhibit 1, pp. 12-20.

Second, the Department presented multiple applications Respondent completed during the alleged fraud period and she indicated in each application that she was not fleeing from felony prosecution or jail and/or violation of her probation or parole. See Exhibit 1, pp. 37-106.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. 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 1, pp. 37-106. In the applications, Respondent indicated that she is not currently in violation of a probation or parole and/or fleeing from felony prosecution or jail, even though the evidence indicated that she was in violation of her probation or parole and/or fleeing from felony prosecution or jail at that time. See Exhibit 1, pp. 12-20 and 37-106. As such, 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 court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 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, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a two-year disqualification under the FAP program. BAM 720, p. 16.

Overissuance – Food Assistance Program

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 the FAP benefits because of her criminal justice disqualification. See BEM 203, pp. 1-2. The evidence indicated that the group size was one during the OI period. See Exhibit 1, p. 104. Thus, Respondent was overissued FAP benefits for any period that she was disqualified.

Applying OI period begin date policy, it is found that the appropriate OI begin date is July 1, 2010. See BAM 720, p. 7.

In establishing the OI amount, the Department presented benefit summary inquiries showing that Respondent was issued FAP benefits by the State of Michigan from July 2010 to July 2014 totaling [REDACTED]. See Exhibit 1, pp. 107-114. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits for the time period of July 1, 2010 to July 31, 2014.

Overissuance – State Emergency Relief

In this case, the Department indicated that Respondent received emergency assistance with SER payments totaling \$361 and the alleged OI period is December 1, 2011 to February 14, 2014. See Exhibit 1, p. 4.

For SER only, BAM 720 states that suspected IPV's can be combined with FIP, SDA, CDC and FAP programs to meet the OIG referral threshold of \$500. BAM 720, p. 6. The Recoupment Specialist (RS) follows the procedures in the SER manual for recoupment of SER. BAM 720, p. 4.

A SER overpayment is an amount of assistance issued that the SER group was not eligible to receive. ERM 404 (April 2011 and March 2013), p. 1. The Department attempts to obtain repayment from the SER group of all SER overpayments. ERM 404, p. 1. SER overpayments are recouped only by requesting the SER group to repay the amount overpaid in cash (cash recoupment). ERM 404, p. 1.

Eligibility based on alien and fugitive felon status is limited to the requirements listed in ERM 202 (October 2011), p. 1. Policy states that fugitive felons are not eligible for SER assistance, their presence disqualifies the group. ERM 202, p. 1.

In this case, the evidence presented that Respondent was a fugitive felon and was not eligible for SER assistance during the OI period. See Exhibit 1, pp. 12-20 and ERM 202, p. 1. The Department presented Respondent's benefit summary inquiry which showed that Respondent received emergency assistance with SER payments totaling [REDACTED] during the OI period of December 1, 2011 to February 14, 2014. See Exhibit 1, pp. 107-114. Thus, the Department is entitled to recoup [REDACTED] of SER benefits for the time period of December 1, 2011 to February 14, 2014. The total OI amount the Department is entitled to recoup is [REDACTED] ([REDACTED] FAP OI plus [REDACTED] SER OI).

