

**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.: 15-002778
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 8, 2015
County: OAKLAND-DISTRICT 4
(NORTH SAGINAW)

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 8, 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 February 27, 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 his criminal justice disqualifications.
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 periods as follows: March 10, 2011 to March 31, 2011; May 1, 2011 to February 28, 2012; March 27, 2012 to March 31, 2012; and May 1, 2012 to November 30, 2012 (fraud periods).
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 \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
9. This was Respondent's first alleged IPV.
10. On April 2, 2015, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Disqualification Hearing, which scheduled a hearing on May 7, 2015.
11. On May 6, 2015, the Administrative Law Judge (ALJ) sent both parties an Adjournment Order.
12. On May 8, 2015, MAHS sent both parties a Notice of Disqualification Hearing, which rescheduled the hearing for June 8, 2015.
13. The 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.

Effective January 1, 2009 and July 1, 2011, BEM 203 stated that a person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- He is in violation of the terms of probation or parole (see above), **and**
- The conduct for which he was convicted occurred after August 22, 1996.

BEM 203 (January 2009 and July 2011), p. 2. If the person is not in violation of the terms of probation or parole, Family Independence Program (FIP) benefits must be paid in the form of restricted payments (see BAM 420) and he must have an authorized representative for FAP. BEM 203, p. 2.

Effective October 1, 2011, BEM 203 added the 2nd offense drug-related felony policy, which stated that stated an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203, p. 2.

Effective October 1, 2012, BEM 203 stated an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203 (October 2012), p. 2. BEM 203 added the words “in separate periods.” See BEM 203, p. 2.

Based on the above policy, the two or more drug-related felony disqualification did not become effective until October 1, 2011.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department of his prior drug-felony convictions, which occurred after August 22, 1996.

First, the Department argued that Respondent was convicted of multiple drug-related felonies on March 11, 1998 and March 8, 2001. See Exhibit A, pp. 4 and 39-41. It should be noted that the Department also indicated that Respondent was convicted of another drug-related felony on December 3, 2013, however, this was subsequent to the alleged fraud period. See Exhibit A, pp. 4 and 39-41.

Second, the Department presented Respondent's redetermination dated March 10, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 12-15. In the redetermination, Respondent marked "no" to the question if anyone has been convicted of a drug-related felony occurring after August 22, 1996. See Exhibit A, p. 15.

Third, the Department presented Respondent's semi-annual contact report (contact report) dated September 30, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 16-17.

Fourth, the Department presented Respondent's LexisNexis report, to show Respondent's criminal history/convictions for felony drug-related cases. See Exhibit A, pp. 18-35.

Fifth, the OIG agent spoke with Respondent via telephone on February 5, 2015, in which Respondent confirmed he had multiple convictions for drug-related felonies. See Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department failed to establish that Respondent committed an IPV of his FAP benefits.

First, as stated above, Department policy states that the two or more drug-related felony disqualification did not become effective until October 1, 2011. However, the Department still retroactively applied this policy to cover the alleged fraud period of March 10, 2011 to September 30, 2011. See Exhibit A, p. 5. Respondent, though, could not be disqualified from FAP benefits based on the two or more drug-related felony policy. As such, the Department failed to establish that Respondent committed an IPV of his FAP benefits during this time period (March 10, 2011 to September 30, 2011).

Second, the Department argued that Respondent was convicted of multiple drug-related felonies on March 11, 1998 and March 8, 2011. See Exhibit A, pp. 39-41. However, the Department failed to establish by clear and convincing evidence that Respondent was convicted of two or more times drug-related felonies during the alleged IPV period. A subsequent review of Respondent's Offender Tracking Information System (OTIS) report from the Michigan Department of Corrections (MDCOC) discovered that both these convictions arose from the same offense date, April 7, 1997. See Exhibit A, pp. 39-41. The evidence appears to indicate that the offense occurred on the same date

and therefore, the 1st offense for a drug-related felony would be followed in this instance. See BEM 203, pp. 2-3. Nevertheless, the evidence presented does not establish by clear and convincing evidence that Respondent committed an IPV of his 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 subject to a disqualification under the FAP program. BAM 720, p. 16.

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 715 (July 2014), p. 6.

As stated previously, the Department failed to show that Respondent committed an IPV of his FAP benefits. 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.

Nonetheless, a client error is not present in this situation because the Department failed to establish that Respondent was convicted two more more times of a drug-related felony during the alleged IPV/OI period. In fact, a portion of the alleged IPV/OI period, the Department applied the improper policy. As such, the Department has failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of [REDACTED] during the alleged fraud periods. See Exhibit A, p. 5. Therefore, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits and there is no OI present in this case.

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.
2. Respondent **did not** receive an OI of program benefits in the amount of [REDACTED] from FAP benefits.

The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: **6/9/2015**

Date Mailed: 6/9/2015

EJF/tm

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).

[illegible]