

**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.: 15-004162
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 1, 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 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 1, 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 March 19, 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 composition and the failure to report his dates of incarceration.
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 September 1, 2011 to 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 \$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. 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.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (June 2011), p. 5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105, p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home and address. See BAM 105, p. 7.

FAP group composition is established by determining:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and
4. Whether the person(s) resides in an eligible living situation (see Living Situations).

BEM 212 (September 2010), p. 1.

The phrase purchase and prepare together is meant to describe persons who customarily share food in common. BEM 212, p. 4. Persons customarily share food in common if:

- They each contribute to the purchase of food.
- They share the preparation of food, regardless of who paid for it.
- They eat from the same food supply, regardless of who paid for it.

BEM 212, pp. 4-5. In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212, p. 5.

Additionally, a person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804 (August 2011), p. 1.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because Respondent failed to report his incarceration and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility. Second, the Department also indicated that Respondent received FAP benefits for a group size of two, himself and his aunt. The Department argued that Respondent should have not received assistance for the additional group member (Respondent's aunt). See Exhibit A, p. 3.

First, the Department presented Respondent's application dated March 29, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 25-44. In the application, Respondent reported that he was expected to leave jail/prison on March 24, 2011. See Exhibit A, p. 26. Moreover, Respondent

reported a household size of two (himself and his aunt); however, he indicated that his aunt is not applying for assistance. See Exhibit A, pp. 27-28.

Second, the Department presented Respondent's application dated June 29, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 45-63. In the application, Respondent reported a household size of two (himself and his aunt); however, he indicated that his aunt is not applying for assistance. See Exhibit A, pp. 47-48. Respondent, though, did indicate in the application that everyone in the household buys food and fixes or eat meals together. See Exhibit A, p. 47.

Third, the Department presented a documentation record dated March 16, 2012, in which Respondent's aunt contacted the Department inquiring on a Wage Match Client Notice. See Exhibit A, pp. 11-13. The aunt reported that she was unaware that she was in the FAP group and that Respondent was incarcerated in August (2011). See Exhibit A, p. 11. Also, the Department appeared to contact Respondent's parole officer who reported that Respondent went to prison on July 18, 2011 and will remain there until June 1, 2012. See Exhibit A, p. 11.

Fourth, the Department presented verification of Respondent's incarceration dated February 27, 2015, which showed that he was incarcerated from July 18, 2011 to May 11, 2012. See Exhibit A, p. 14. In fact, the Department presented Respondent's Electronic Benefit Transfer (EBT) history, which showed that there were three transactions conducted during the time Respondent was incarcerated: August 22, 2011; September 30, 2011; and March 13, 2012. See Exhibit A, pp. 15-16. However, the Department testified that it was not arguing trafficking for these transactions and instead, argued that the alleged IPV is based on his incarceration. It should be noted that Respondent began using his FAP benefits excessively after he was no longer incarcerated because the FAP benefits had accrued during his incarceration period. See Exhibit A, p. 16.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld information. The Department presented Respondent's applications and documentation record; however, these documents were either before or after alleged fraud period. Moreover, the evidence failed to show by clear and convincing evidence that Respondent intentionally withheld his incarceration information for the purpose of maintaining Michigan FAP eligibility. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented his incarceration information for the purpose of establishing, maintaining, increasing or preventing reduction of his 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 and/or agency 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.

An agency error is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. BAM 705 (July 2014), p. 1.

First, a client error is present in this situation because the evidence presented that Respondent failed to notify the Department of his incarceration. See BAM 715, p. 1. A person in a federal, state or local correctional facility for more than 30 days is not eligible for FAP benefits. BAM 804, p. 1. The evidence established that Respondent was incarcerated during the OI period and therefore, he was not eligible for FAP benefits. See Exhibit A, p. 14.

Second, an agency error OI is present in this case because the Department incorrectly determined Respondent's FAP group composition based on the available information he provided in the application and the fact that the aunt was unaware she was included in the FAP group. See Exhibit A, pp. 11 and 47-48. Even though the Respondent indicated everyone in the household buys food and fixes or eat meals together, the evidence appeared to indicate that Respondent intended the FAP group composition to

be one, rather than two. The Department can still proceed with recoupment/collection of the OI when there is an agency error present.

Applying the agency/client error overissuance period standards, the Department properly determined that the OI period began on September 1, 2011. See BAM 705, p. 5 and BAM 715, pp. 4-5.

Additionally, 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 705, p. 6 and BAM 715, p. 6.

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 September 2011 to January 2012, which totaled [REDACTED]. See Exhibit A, p. 24. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from September 1, 2011 to January 31, 2012.

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** receive an OI of program benefits in the amount of [REDACTED] from the FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.



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

Date Signed: **6/2/2015**

Date Mailed: **6/2/2015**

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