

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

IN THE MATTER OF:



Reg. No.: 201322234
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: April 10, 2013
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon request by the Department of Human Services (Department) for a hearing. After due notice, a telephone hearing was held on April 10, 2013 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: .

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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP) Food Assistance Program (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 8, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly having committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP FIP MA benefits issued by the State of Michigan.
4. Respondent was aware that he was prohibited from receiving food assistance benefits from another state while receiving FAP benefits from the State of Michigan.
5. Respondent had no apparent physical or mental impairment that would limit the understanding of these requirements or limitations.
6. The Department alleges that Respondent was receiving food assistance benefits issued by the State of [REDACTED] while he was receiving Michigan-issued FAP benefits.
7. The OIG indicates that the time period they are considering the fraud period is August 1, 2009 through December 31, 2009.
8. During the alleged fraud period, Respondent was issued \$1000 in FAP FIP MA benefits from the State of Michigan.
9. The Department alleges that Respondent was entitled to \$0 in FIP FAP SDA CDC benefits from the State of Michigan during this time period.
10. As a result, the OIG alleges that Respondent received an OI in the amount of \$1000 under the FIP FAP SDA CDC program.
11. This was Respondent's first second third alleged FAP IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was 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), the Department of Human Services Bridges Eligibility Manual (BEM), and the Department of Human Services Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 Mich Admin Code R 400.3001 through R 400.3015.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor, or
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more, or
 - the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee. [BAM 720 (February 1, 2013), p 10.]

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 their reporting responsibilities. [BAM 720, p 1 (emphasis in original).]

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). 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.

In this case, the Department clarified at the hearing that it was alleging that Respondent received concurrent food assistance benefits from the State of Michigan and the State of ██████. The evidence presented consisted of (i) a PARIS match, which showed, based on match of Respondent's name, birthdate and social security number, that Respondent received food assistance benefits from Michigan and ██████ in November 2009, (ii) documentation from ██████ authorities showing that Respondent received ██████-issued food assistance benefits from July 2009 through December 2009, and (iii) a benefits issuance summary showing that the Department issued FAP benefits to Respondent between August 1, 2009 and December 31, 2009. This evidence established that Respondent received both Michigan-issued FAP benefits and food assistance benefits issued by the State of ██████ between August 1, 2009 and December 31, 2009, the fraud period alleged by the Department. Evidence that Respondent received FAP benefits issued by the State of Michigan while receiving food benefits issued by the State of ██████ provided clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of FAP benefits or eligibility in the State of Michigan. Thus, the Department satisfied its burden of establishing that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 2009), 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 concurrent receipt of benefits. BAM 720, p 13.

Although the Department satisfied its burden of establishing that Respondent committed an IPV of FAP benefits involving concurrent receipt of benefits and the disqualification period applicable to concurrent receipt of benefits is ten years, the documentation sent to Respondent by the Department notifying him of the alleged IPV informed him that he was subject to a one-year disqualification. Because Respondent was notified of a one-year disqualification, that is the disqualification applied to Respondent's FAP case.

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (February 1, 2013), p 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6; BAM 715 (February 1, 2013), pp 1, 5; BAM 705 (February 1, 2013), p 5.

In this case, the Department established that it issued \$1000 in FAP benefits to Respondent between August 1, 2009 and December 31, 2009. As discussed above, during that same period, Respondent was receiving food assistance benefits issued by the State of ██████. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he received food assistance benefits issued by the State of ██████. BEM 222 (July 1, 2011), p 2. Thus, based on the facts in this case, Respondent was not eligible for any FAP benefits issued by the State of Michigan between August 1, 2009 and December 31, 2009, and the Department is entitled to recoup the entire \$1000 in FAP benefits issued to Respondent by the State of Michigan during that period.

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, concludes that:

1. Respondent did did not commit an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$1000 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.
- initiate recoupment procedures for the amount of \$1000 in accordance with Department policy.
- reduce the OI to \$ _____ for the period _____, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for **one** year. This disqualification period shall begin immediately as of the date of this Order.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/22/2013

Date Mailed: 4/22/2013

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NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

ACE/hw

cc:

