

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-51816
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: October 3, 2013
County: Wayne (82-57)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, 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 October 3, 2013 from Detroit, Michigan. The Department was represented by [REDACTED]

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 400.3178(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, by clear and convincing evidence, 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 June 14, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly 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 Department.
4. The OIG indicates that the time period they are considering the fraud period is between April 1, 2011, and March 31, 2012.
5. During the alleged fraud period, Respondent was issued \$5,138 in FAP FIP MA benefits from the State of Michigan.
6. During the alleged fraud period, the Department alleges that Respondent was issued FAP FIP MA benefits by the [REDACTED].
7. This was Respondent's first second third alleged IPV.
8. 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), 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 (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 Mich Admin Code, R 400.3001 through R 400.3015.

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 \$1000 or more, or
 - the total OI amount is less than \$1000, **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 (February 2013), p. 10.

In this case, the Department alleged that Respondent committed an IPV because she received food assistance benefits from the [REDACTED] at the same time she was receiving food assistance benefits from the State of Michigan. The Department testified that, after it was advised by [REDACTED] authorities that Respondent no longer had a valid [REDACTED] address, it conducted a Lexis-Nexis search based on Respondent's social security number to find other addresses reported by Respondent and determined that the address provided to the Michigan Administrative Hearing System (MAHS) was the best available address for Respondent.

After the hearing was scheduled and before it was held, the Notice of Hearing and accompanying documents mailed to Respondent via first class mail at the address identified by the Department were returned by the United States Postal Service as undeliverable, with no forwarding address. Department policy dictates that when correspondence sent to Respondent concerning an IPV is returned as undeliverable, the hearing cannot proceed with respect to any program other than FAP. BAM 720, p. 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

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 (July 2013), p. 6; 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.

In this case, the Department alleged that Respondent received FAP benefits from the State of Michigan between April 1, 2011, and March 31, 2012, and received food assistance benefits from the [REDACTED] during that same period. A person cannot receive FAP in more than one state for any month. BEM 222 (June 2011), p. 2.

A review of the record in this case raises two concerns. First, to establish an IPV, the Department must establish that the client was clearly and correctly instructed regarding his or her reporting responsibilities. In this case, the Department presented no evidence to establish that Respondent was aware of her obligation to report changes in residency.

Secondly, the evidence presented by the Department fails to establish that Respondent received food assistance benefits from [REDACTED] during the same period she was issued FAP benefits by the Department. Although the Department testified that it was advised by [REDACTED] authorities that Respondent began receiving food assistance benefits (referred to as SNAP benefits in [REDACTED]) on April 6, 2011, the printout provided by the [REDACTED] shows that Respondent applied for TANF (Temporary Assistance for Needy Families) benefits in [REDACTED] [the equivalent of Family Independence Program (FIP) benefits in Michigan] on April 6, 2011, and applied for SNAP benefits in [REDACTED] on March 15, 2012, with April 1, 2012, listed as the effective date. Respondent's [REDACTED] case for both TANF and SNAP benefits closed on September 11, 2012. The Department testimony at the hearing that its contact at [REDACTED] informed it that Respondent received SNAP benefits beginning April 6, 2011, is inconsistent with the documentary evidence. In light of the documentary evidence showing that SNAP benefits were not issued to Respondent from the [REDACTED] until April 1, 2012, and in the absence of any further verification from VDSS concerning the period SNAP benefits were issued to Respondent by the [REDACTED], the Department has failed to establish by clear and convincing evidence that Respondent received SNAP benefits from the [REDACTED] between April 1, 2011, and March 31, 2012, when she was receiving FAP benefits from the State of Michigan. Accordingly, the Department has failed to establish its IPV case against Respondent on the basis of concurrent receipt of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (May 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 failed to establish that Respondent committed an IPV of her FAP benefits. Therefore, Respondent is not subject to a disqualification.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (July 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 2013), pp. 1, 5; BAM 705 (February 2013), p. 5.

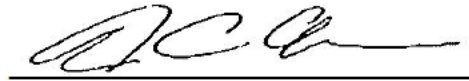
In this case, the Department alleges that Respondent was ineligible to receive the \$5,138 in FAP benefits issued to her between April 1, 2011, and March 31, 2012, because she was receiving food assistance benefits from the [REDACTED] during this period. However, as discussed above, the Department has failed to establish that Respondent received food benefits from the [REDACTED] between April 1, 2011, and March 31, 2012. Because the Department has failed to establish that Respondent was ineligible for the FAP benefits at issue, the Department has failed to establish an OI.

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 of FAP FIP MA by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$5,138 from the following program(s) FAP FIP MA.

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



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

Date Signed: October 9, 2013

Date Mailed: October 10, 2013

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/pf

cc:

