

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

IN THE MATTER OF:



Reg. No.: 2013-2
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: March 27, 2013
County: Macomb (50-12)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on March 27, 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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC) |
| <input type="checkbox"/> Medical Assistance (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

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC)? |

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 September 25, 2012, 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 FIP FAP SDA CDC MA benefits during the relevant periods at issue.
4. Respondent was was not aware of the responsibility to report changes in circumstances, including address changes, to the Department.
5. Respondent had no 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 they are considering the fraud period is March 1, 2011, to August 30, 2012 (fraud period).
7. During the alleged fraud period, Respondent was issued \$2,693 in FIP FAP SDA CDC MA benefits from the State of Michigan, and the Department alleges he was eligible to receive \$0 in benefits.
8. This was Respondent's first second third alleged IPV.
9. 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), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and 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 cases when:

- benefit overissuances are not forwarded to the prosecutor,
- 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.

BEM 720 (February 1, 2013), p. 10.

Intentional Program Violation

Suspected IPV means an overissuance (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 alleges that Respondent committed an IPV of FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 1, 2009 and January 1, 2012), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 1, 2008, and November 1, 2012), pp. 2-3.

The Department established that on December 23, 2010, Respondent began using his FAP benefits issued by the State of Michigan in Tennessee. Respondent used his FAP benefits in Michigan for a single week in January 2011 and in February 2011, and one day in March 2011, but exclusively in Tennessee beginning April 12, 2011. There was an interruption in Respondent's receipt of FAP benefits and he stopped receiving FAP benefits on June 30, 2011. Respondent reapplied for FAP benefits on November 17, 2011. On his application, Respondent identified a [REDACTED] Michigan address. However, his FAP transactions after the application were entirely in Tennessee. This evidence was sufficient to establish, by clear and convincing evidence, that Respondent intentionally misrepresented his address for the purpose of establishing and maintaining his Michigan-issued FAP benefits. Thus, the Department established that Respondent committed an IPV of his FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an 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 OI 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.

Because the Department satisfied its burden of establishing that Respondent committed a first IPV of FAP benefits, Respondent is therefore subject to a one year disqualification.

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 (December 1, 2011), 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 (December 1, 2011), pp. 1, 5; BAM 705 (December 1, 2011), p. 5.

At the hearing, the Department established that \$2,693 in FAP benefits were issued by the State of Michigan to Respondent during the alleged fraud period, March 1, 2011, through August 31, 2012. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

Respondent was no longer eligible to receive FAP benefits issued by the State of Michigan once he resided out of state for more than 30 days. BEM 212 (October 1, 2008), pp. 2-3. Respondent's FAP transaction history showed that Respondent began using his FAP benefits issued by the State of Michigan in Tennessee beginning December 23, 2010. He came back to Michigan and used his benefits in Michigan from January 21, 2011, to January 29, 2011, from February 12, 2011, to February 20, 2011, and for a single day on March 17, 2011. However, in between those periods, he continued to use his FAP benefits in Tennessee. He used his benefits exclusively in Tennessee from April 12, 2011, through August 31, 2012. These facts establish that Respondent had established an out-of-state residence in Tennessee beginning in January 2011. Under these facts, the Department established that it is entitled to recoup \$2,693 in FAP benefits it issued to Respondent between March 1, 2011 and August 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, 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 \$2,693 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,693 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.


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

Date Signed: April 3, 2013

Date Mailed: April 3, 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:

