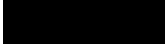


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

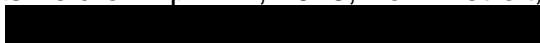

IN THE MATTER OF:



Reg. No.: 2013-32716
Issue No.: 3052
Case No.: 
Hearing Date: April 24, 2013
County: Wayne (82-18)

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 April 24, 2013, from Detroit, Michigan. The Department was represented by 


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 March 7, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having 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 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 residency 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 November 7, 2008, through April 8, 2009 (the "fraud period").
7. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits during the fraud period in the amount of \$1,069.66.
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 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 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,
 - the alleged fraud is committed by a state/government employee.

BEM 720 (February 1, 2013 and October 1, 2009), p. 10.

Intentional Program Violation

Suspected IPV means (i) a client is alleged to have trafficked FAP benefits or (ii) 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 alleges that Respondent committed an IPV of his 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), pp. 2-3.

The Department established that from November 7, 2008, through March 18, 2009, Respondent used his FAP benefits issued by the State of Michigan exclusively out of state in Texas. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits, to establish an IPV the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits. The Department did not present any evidence other than Respondent's out-of-state use to establish Respondent's intent. This evidence alone was not sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented his change of address to the Department for the purpose of maintaining his Michigan FAP eligibility. Thus, the Department has failed to establish 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.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

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.

At the hearing, the Department alleges that Respondent was not eligible for any of the FAP benefits he used while he was in Texas and seeks to recoup the \$1,069.66 in FAP benefits Respondent used in Texas. The FAP transaction history shows that Respondent began using his Michigan-issued FAP benefits in Texas on November 7, 2008. Clients are not eligible for FAP benefits if they do not reside in Michigan. PEM 220 (October 1, 2007), p. 1; BEM 220 (July 1, 2009, and January 1, 2012), p. 1. As discussed above, Respondent's FAP use out of state established that he did not reside in Michigan. Thus, he was overissued FAP benefits.

To determine the first month of the OI period, BAM 715 and BAM 720 provide that the Department must consider (i) the client reporting period per BAM 105, (ii) the full standard of promptness for change processing per BAM 220, and (iii) the full negative action suspense period per BAM 220. See BAM 715, p. 4; BAM 720, p. 6. Where reliable information indicates that the group left the state, BAM 220 provides that the action must take effect no later than the month after the change. BAM 220 (January 1, 2011), p. 4. Because Respondent began using his FAP benefits out of state in November 2008, the OI period did not begin until December 2008. Removing the November 2008 \$176 FAP issuance from the OI amount reduces the Department's recoupment to \$893.66. Thus, the Department is entitled to recoup the \$893.66 in FAP benefits it issued to Respondent for the fraud period between November 7, 2008, and April 8, 2009.

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:

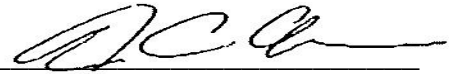
1. Respondent did did not commit an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$893.66 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.

initiate recoupment procedures for the amount of \$ _____ in accordance with Department policy.

reduce the OI to 893.66 for the period November 7, 2008, and April 8, 2009, in accordance with Department policy.



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

Date Signed: May 1, 2013

Date Mailed: May 2, 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:

