

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

IN THE MATTER OF:



Reg. No.: 201332732
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: June 18, 2013
County: Wayne

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 June 18, 2013, from Lansing, Michigan. The Department was represented by Jennifer Allen 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)
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 February 22, 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 benefits during the period of December 1, 2010, through August 31, 2011.
4. On the Assistance Application signed by Respondent on September 17, 2010, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP FIP benefits outside of the State of Michigan beginning in December of 2010.
8. The Office of Inspector General indicates that the time period they are considering the fraud period is December 1, 2010, through August 31, 2011.
9. During the alleged fraud period, Respondent was issued [REDACTED] in FAP FIP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP FIP benefits from the State of Ohio.
11. The Department has has not established that Respondent received concurrent benefits and thus committed an IPV.
12. This was Respondent's first second third IPV.
13. A notice of disqualification 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 AC, Rule 400.3001 through Rule 400.3015.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700.

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.

IPV is suspected when there is 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.

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

- benefit overissuance 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.

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.

Clients that commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. 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.

Additionally, the Department failed to establish that the Respondent had no intent to remain a resident of Michigan as of December 1, 2013. The Respondent made use of his Food Assistance Program (FAP) benefits exclusively in Michigan until December 17, 2010. After December 17, 2010, he used his Food Assistance Program (FAP) benefits exclusively in the State of Ohio through August 10, 2011.

Food Assistance Program (FAP) recipients have 10 days to report a change in circumstances that affects their eligibility to receive benefits. Following a report of a change, policy gives the Department time to enter these changes in its system.

The use of Michigan Food Assistance Program (FAP) benefits exclusively in another state is evidence supporting a finding of a lack of intent to remain a resident of Michigan. Applying for and receiving food assistance in another state is further evidence of a lack of intent to remain a Michigan resident, as well as another violation of Michigan Food Assistance Program (FAP) policy.

However, the mere usage of Michigan benefits in another state does not establish a lack of intent to remain a Michigan resident.

This Administrative Law Judge finds that the Department has failed to establish an Intentional Program Violation (IPV) for December of 2010.

This Administrative Law Judge finds that the Claimant did not have an intent to remain a Michigan resident as of January 1, 2011, and that his failure to report a change of residency was to receive \$1,600 of Michigan Food Assistance Program (FAP) benefits that he was not eligible for. This Administrative Law Judge finds that the Claimant received food assistance issued by both Michigan and Ohio during the fraud 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 commit an IPV.
2. Respondent did receive an OI of program benefits from the Food Assistance Program (FAP).
3. The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period January 1, 2010, through August 31, 2011, and initiate recoupment procedures in accordance with Department policy.
4. The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years. This disqualification period shall begin immediately as of the date of this Order.

/s/
Kevin Scully
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 07/01/2013

Date Mailed: 07/01/2013

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.

KS/pw

cc:

[REDACTED]

