

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

IN THE MATTER OF:



Reg. No.: 2014-3492
Issue No.: 3005
Case No.:
Hearing Date: December 17, 2013
County: Genesee 06

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

**HEARING DECISION FOR
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 December 17, 2013 from Lansing, Michigan. The Department was represented by of the Office of Inspector General (OIG).

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 Food Assistance Program (FAP) 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 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 October 3, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having received FAP benefits from Michigan and using them out of state and, as such, allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. On the Assistance Application signed by Respondent on June 15, 2011, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her 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 benefits outside of the State of Michigan beginning in July 2011.
8. The OIG indicates that the time period they are considering the fraud period is September 1, 2011 to May 1, 2012.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was not issued FAP benefits from another state.
11. This was Respondent's first alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 \$ [REDACTED] or more, or
 - the total OI amount is less than \$ [REDACTED] **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 (2012), 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 reporting responsibilities.

- Bridges Administrative Manual (BAM) 700 (2011), p. 6; BAM 720, (2012) 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.

DHS alleged Respondent intentionally failed to report a change in residency to DHS resulting in improper FAP benefit issuances. To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (2012), p. 1. For FAP benefits, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. *Id.* Eligible persons may include persons who entered the state with a job commitment or to seek employment or students (this includes students living at home during a school break.)
Id.

A requirement to the IPV claim is that Respondent lost Michigan residency. A loss of Michigan residency does not necessarily coincide with leaving the State of Michigan. DHS has no known policies preventing people from traveling outside of Michigan, though there is a DHS policy concerning the duration a person can be absent from a household before the person is considered out of the household. FAP benefit group composition policy states that clients absent from a home for longer than 30 days are not considered temporarily absent. BEM 212 (2012), pp. 2, 3; in other words, if a person is out of a home longer than 30 days, they are no longer in the home. The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for the absent person to return home. The policy is not necessarily directly applicable to residency, but it seems reasonable to allow clients a 30-day period before residency in another state is established; the 30-day period beginning with a client's first out-of-Michigan food purchase.

Based on the presented evidence, Respondent is found to not be a Michigan resident as of 8/16/11; 30 days after Respondent first accessed FAP benefits outside of Michigan. Though Respondent is found to not be a Michigan resident as of 8/16/11, this does not prove that an IPV was committed. DHS assumed that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan. It is plausible that Respondent reported a change in residency but that DHS failed to act on Respondent's reporting. DHS was not able to present any written statement from Respondent that claimed residency in Michigan during a period when Respondent was known to be outside of Michigan. DHS also could not provide evidence of a verifiable reporting system that established the failure to change Respondent's address was the fault of Respondent. This is somewhat supportive of finding that Respondent did not commit fraud.

Also supportive of the above finding is that Respondent exclusively accessed FAP benefits in Tennessee for a ten-month period. It is possible that Respondent maintained Michigan residency while buying food elsewhere for nine months. It is possible that Respondent always intended to return to Michigan. Though there are possibilities that Respondent was a Michigan resident between 8/16/11 and 5/21/12, it is improbable. It is particularly less possible when Respondent failed to appear to rebut any of the DHS allegations.

Consideration was also given to the proximity between Respondent's reported address and the state in which FAP benefits were accessed. Respondent reported an address known to be several hours from Tennessee. If the address and state were in closer proximity, a loss of residency becomes less likely. The ample distance is supportive of a finding that Respondent lost Michigan residency.

DHS did not allege that Respondent concurrently received FAP benefits from multiple states. Unless Respondent received FAP benefits from more than one state, there is no apparent motive for Respondent's alleged fraud; this presumes that Respondent could have received FAP benefits from the state in which Respondent resided. Without evidence of a financial incentive, a contention of fraud is much less persuasive. Based on the presented evidence, DHS failed to establish that Respondent intentionally failed to report a change in residency. Accordingly, it is found that DHS failed to establish that Respondent committed an IPV. Even though DHS failed to establish that Respondent committed an IPV, it must still be determined whether an OI of benefits occurred.

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. 12. Because it has already been determined that the evidence does not establish that the Respondent committed an IPV, the Administrative Law Judge is not ordering that the Respondent be disqualified from receiving FAP benefits in this case.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2011), p. 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.* For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (2012), p. 13. OI balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

Establishing whether DHS or Respondent was at fault for the OI is of no importance to the collectability of over-issued FAP benefits because DHS may collect the OI in either scenario. Determining which party is at fault may affect the OI period. There is insufficient evidence that Respondent is at fault for the OI. It should be noted that Respondent's use of FAP benefits outside of Michigan is unpersuasive evidence of fault because there is no reason for a client to believe that such use is improper. It is found that the OI was due to DHS error.

For OIs caused by DHS error, the amount is affected by the full standard of promptness (SOP) for change processing and the negative action period. BAM 705 (2012), pp. 4-5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.* For non-income changes, DHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. *Id.*

DHS alleged that FAP benefits were over-issued to Respondent over the period of 9/1/11-5/1/12 due to Respondent's loss of Michigan residency. It was found above that Respondent was not a Michigan resident as of 8/16/11. Allowing 10 days for reporting of the change and 10 days to calculate the benefit month affected results in a date of 9/5/11 and an effective benefit month of 9/11. It is found that the FAP benefit OI period was not correctly determined to be from 9/1/11-5/1/12, because the Respondent continued to receive FAP benefits in Tennessee up until at least May 21, 2012. During the hearing, however, the OIG Agent testified that the Agency was willing to forego collecting on the amount issued to the Respondent in May of 2012. As such, the Administrative Law Judge concludes that DHS established that Respondent received a total of \$ [REDACTED] in FAP benefits from the State of Michigan over the period of 9/1/11-5/1/12. Accordingly, DHS established an OI of \$ [REDACTED] in FAP benefits for the period of 9/1/11-5/1/12.

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 not commit an IPV of FAP by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP FIP MA.

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The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

/s/

Susanne E. Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/14/14

Date Mailed: 1/14/14

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.

SEH/tb

cc:

[REDACTED]