

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

IN THE MATTER OF:

██████████
██████████████████
██████████████████

Reg. No.: 2014-9014
Issue No(s): 2005; 3005
Case No.: ██████████
Hearing Date: February 20, 2014
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 Regulation (CFR), 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 February 20, 2014, from Detroit, Michigan. The Department was represented by ██████████ Agent 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) and Medical Assistance (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 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 24, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. Respondent used her Bridge card in Michigan from January of 2009 through December of 2010. During this period, Respondent used her Bridge card in Indiana from July of 2009 through December 11, 2009 with some usage of her Bridge card in Michigan in September of 2009.
4. A notice of hearing was mailed to Respondent at her last known address in Corunna, Michigan, 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 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 \$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, 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.

BAM 700, p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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.

BEM 220 instructs that to be eligible for assistance in Michigan, a person must be a Michigan resident. For FAP purposes, 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.

In this case, Respondent used her Bridge card in Michigan from January of 2009 through December of 2010. During this period, Respondent used her Bridge card in Indiana from July of 2009 through December 11, 2009 with some usage of her Bridge card in Michigan in September of 2009. Respondent's last known address is Corunna, Michigan, and the notice of this hearing was mailed to that address and not returned. The Department has not proven that Respondent was not a resident of Michigan for the time that she was in Indiana. BEM 220 does not give a maximum time limit that a person may leave the state and lose residency in the State of Michigan. The simple act of leaving the state—even for an extended length of time—does not remove a person's residency status for the purposes of the FAP program. It is noted that the Department cited BEM 212 regarding temporary absences, but BEM 212 addresses who must be included in FAP groups; it does not address residency.

The Department also alleges that Respondent received concurrent benefits in Indiana. However, the Department presents as evidence an e-mail inquiring of Indiana personnel whether Respondent and others received Indiana benefits. (Emphasis added.) The Indiana personnel respond that "client" received Indiana benefits, but does not specify who "client" is. Thus, the Department has not proven that Respondent in particular received concurrent benefits.

The Department has not proven by clear and convincing evidence that Respondent received an OI based on change of residency or receipt of concurrent benefits. Therefore, the Department has not proven by clear and convincing evidence that Respondent committed an IPV with respect to FAP.

As to MA, BEM 220 instructs that an individual is a resident if both of the following apply:

- Is living in Michigan, except for a temporary absence.
- Intends to remain in Michigan permanently or indefinitely.

In the present case, the Department has shown that Respondent was temporarily absent from Michigan, but kept Michigan as her residency, as evidenced by Respondent's EBT usage and by the Notice of Hearing being mailed to Respondent at a Michigan address and not being returned as undeliverable. The Department presented evidence of MA usage during an alleged fraud period, but the evidence does not prove or disprove residency. The Department has therefore not met its burden of proving by clear and convincing evidence that Respondent committed and IPV with respect to MA.

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, 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 not proven by clear and convincing evidence that Respondent committed an IPV, so Respondent is not disqualified from receiving benefits.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

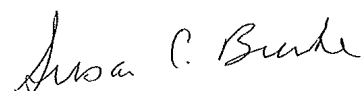
In this case, it is concluded that Respondent did not receive an OI in FAP or MA, as the Department has not proven that Respondent was not a resident of Michigan while she was receiving benefits, nor has the Department proven that Respondent received concurrent benefits from Indiana.

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, if any, concludes that:

1. The Department has not proven by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits.

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



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 7, 2014

2014-9014/SCB

Date Mailed: March 7, 2014

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.

SCB/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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