

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

IN THE MATTER OF:

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Reg. No.: 2014-24940
Issue No(s): 3005
Case No.: ██████████
Hearing Date: March 26, 2014
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 March 26, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation 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
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 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
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? 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 February 7, 2014, 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 issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in residency.
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 it is considering the fraud period is January 1, 2011 to May 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$5,800 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$3,000 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$2,800.
9. This was Respondent's first second third alleged IPV.
10. 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), 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 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 (July 2013), p. 12.

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 (July 2013), p. 7; 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.

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, a person must be a Michigan resident. BEM 220 (January 2011), 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. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1.

For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (September 2010), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2011 to May 31, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated November 23, 2009, to show that he acknowledged the obligation to report changes in circumstances as required. See Exhibit 1. A review of the application indicated that he moved from Florida as of July 15, 2009 and that he did not intend to remain in Michigan. See Exhibit 1.

Second, the Department presented Respondent's Redetermination dated October 27, 2010. See Exhibit 1. A review of the Redetermination indicated that he did not report any change in his address. See Exhibit 1.

Third, the Department presented Respondent's Redetermination dated October 6, 2011, which occurred during the alleged fraud period. See Exhibit 1. A review of the Redetermination indicated no change in address, but the form stated he was homeless. See Exhibit 1.

Finally, the Department presented Respondent's FAP transaction history. See Exhibit 1. First, the FAP transaction history showed that from January 1, 2011 to May 10, 2011, Respondent used FAP benefits issued by the State of Michigan out of state in Alabama and Florida. See Exhibit 1. Second, the FAP transaction history showed that from May 17, 2011 to November 29, 2011, Respondent used FAP benefits issued by the State of Michigan in Michigan. See Exhibit 1. Third, the FAP transaction history showed that from December 3, 2011 to July 12, 2012, Respondent used FAP benefits issued by the State of Michigan out of state in Florida and Indiana. See Exhibit 1. Fourth, the FAP transaction history showed that from July 14, 2012 to November 22, 2012, Respondent used FAP benefits issued by the State of Michigan in Michigan. See Exhibit 1. Fifth, the FAP transaction history showed that from November 25, 2012 to June 23, 2013, Respondent used FAP benefits issued by the State of Michigan out of state in Florida. See Exhibit 1.

In summary, the OIG report stated that the Respondent began using the benefits in Florida since 2010, where the Respondent would leave the State of Michigan and spend six to eight months out of state and return for the remainder of the year. See OIG Report, Exhibit 1. The OIG report further stated that the Respondent's EBT usage showed the Respondent leaving the state before winter begins and returns during the summer months.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. 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).

First, the Department presented the Redetermination dated October 27, 2010, which the Department alleged the Respondent began using benefits in Florida during this time period. See OIG report, Exhibit 1. However, the Department failed to present any FAP transactions that occurred in October 2010. The FAP transaction history only showed transactions that began in Florida as of January 1, 2011. See Exhibit 1.

Second, the Department presented Respondent's Redetermination dated October 6, 2011, which occurred during the alleged fraud period. See Exhibit 1. A review of the Redetermination indicated no change in address, but the form stated he was homeless. See Exhibit 1. However, the FAP transaction history actually showed that the Respondent used FAP benefits issued by the State of Michigan in Michigan in October 2011. See Exhibit 1. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage other than out-of-state use. There was no evidence to establish that Respondent had moved out of state, such as a residential lease or employment. It is unknown if Respondent was caring for someone, attending school, or seeking work. Department policy does not prohibit out-of-state usage when the individual intends on coming back. Therefore, the Department failed to

show any evidence that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), 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 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. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan. Thus, no IPV was committed. However, to be eligible, a person must be a Michigan resident. BEM 220, 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.

At the hearing, the Department presented Respondent's FAP transaction history that showed that from January 1, 2011 to May 31, 2013 (alleged fraud period), Respondent used FAP benefits issued by the State of Michigan out of state. See Exhibit 1. Based on this information, it is persuasive evidence that Respondent was not a Michigan resident. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan.

Moreover, FAP group composition policy states a person who is temporarily absent from the group is considered living with the group. BEM 212, p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2. The policy is not directly applicable to residency. However, again, the FAP transaction

history shows that Respondent was using benefits out of state for more than thirty days. This established that Respondent is not temporarily absent from his group. Thus, he was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the RS, whichever is later. BAM 720, p. 7. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 720, p. 7. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7.

Applying the above standard and in consideration of the out-of-state use that the Department indicated it began on November 30, 2010, the Department determined that the OI period began on January 1, 2011. See Hearing Summary, Exhibit 1. It is found that the Department applied appropriate OI begin date. BAM 720, p. 7.

In establishing the OI amount, the Department presented benefit summary inquiries showing that Respondent was issued FAP benefits by the State of Michigan from January 2011 to May 2013 totaling \$5,800. See Exhibit 1. As stated previously, during the alleged fraud period, Respondent conducted transactions in Florida and Michigan. The Department appeared to exclude in its OI calculation, transactions that Respondent conducted in Michigan. The Department showed that the Respondent was issued \$5,800 FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$3,000 in such benefits during this time period. As such, the Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,800.

Based on the above information, the evidence presented that the Department is entitled to recoup \$2,800 of FAP benefits it issued to Respondent between January 1, 2011 and May 31, 2013.

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 established by clear and convincing evidence that Respondent did did not commit an intentional program violation (IPV).

2. Respondent did did not receive an OI of program benefits in the amount of \$2,800 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate collection procedures for a \$2,800 OI in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 7, 2014

Date Mailed: April 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.

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
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