

**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.: 2014-32564
Issue No(s): 3005
Case No.: ██████████
Hearing Date: May 8, 2014
County: Genesee (02)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR CONCURRENT BENEFITS
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 May 8, 2014 from Detroit, 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
 Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (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) 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 January 24, 2014 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 MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on April 16, 2010 and October 7, 2011, Respondent reported that he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in his residence to the Department.
6. Respondent had an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP FIP MA benefits outside of the State of Michigan beginning in November 2010.
8. The OIG indicates that the time period they are considering the fraud period is January 1, 2011 to March 31, 2011 and March 1, 2012 to August 31, 2012.
9. During the alleged fraud periods, Respondent was issued \$1,800 in FAP FIP MA benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Florida.
11. This was Respondent's first second third alleged IPV.
12. 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 (May 2014), pp. 12-13.

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 (May 2014), p. 7; 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 update residency information for the purpose of receiving FAP benefits from more than one state.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2011), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in address and shelter cost changes that result from the move. BAM 105, p. 7.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (May 2010), p. 1.

Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1.

A person cannot receive FAP in more than one state for any month. BEM 222, p. 2. Out-of-state benefit receipt or termination may be verified by one of the following: DHS-3782, Out-of-State Inquiry; Letter or document from other state; or Collateral contact with the state. BEM 222, p. 3.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (January 2009), p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2011 to March 31, 2011 and March 1, 2012 to August 31, 2012. 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 made a fraudulent statement or representation regarding his residence in order to receive multiple FAP benefits simultaneously.

First, the Department presented Respondent's application dated April 16, 2010, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1. A review of Respondent's application indicated a Michigan address and an intent to remain in Michigan. See Exhibit 1. However, Respondent also indicated in the application that he has a mental health medical condition and that he receives Supplemental Security Income (SSI). See Exhibit 1.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1. The FAP transaction history showed that from November 12, 2010 to April 27, 2011, Respondent used FAP benefits issued by the State of Michigan out-of-state in Florida. See Exhibit 1.

Then, the FAP transaction history shows that from October 29, 2011 to December 30, 2011, Respondent used FAP benefits issued by the State of Michigan in Michigan. See Exhibit 1.

Finally, as to the second alleged fraud period, the FAP transaction history showed that from January 17, 2012 to August 28, 2012, Respondent used FAP benefits issued by the State of Michigan out-of-state in Florida. See Exhibit 1.

Third, the Department presented Respondent's application dated October 7, 2011. See Exhibit 1. A review of Respondent's application indicated a Michigan address, an intent to remain in Michigan, and that he is disabled (SSI recipient). See Exhibit 1. It should be noted that this application happened between both alleged fraud periods. Also, Respondent did conduct FAP transactions in the State of Michigan issued by the same state in October 2011, which was during the time of application. See Exhibit 1.

Fourth, the Department presented an out-of-state e-mail correspondence and accompanying documentation from the State of Florida. See Exhibit 1. The documentation confirmed that Respondent received FAP benefits in Florida from May 2011 to October 2011 and March 2012 to July 2012. See Exhibit 1. It should be noted that the benefit summary inquiry shows actual dual assistance received from the State of Michigan and Florida for part of the above time period. See Exhibit 1.

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

First, the evidence presented that the Respondent had an apparent physical or mental impairment that would limit his understanding or ability to fulfill the reporting

responsibilities. See BAM 700, p. 7; BAM 720, p. 1. Policy states that a suspected IPV means an OI exists and includes the condition that the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. See BAM 700, p. 7; BAM 720, p. 1. However, the applications indicated that Respondent had an apparent mental health condition and that he receives SSI. See Exhibit 1. As such, it is persuasive to conclude that Respondent had an apparent mental impairment that would limit his understanding or ability to fulfill the reporting responsibilities. See BAM 700, p. 7; BAM 720, p. 1. Therefore, the conditions necessary for a suspected IPV to exist have not been met. See BAM 700, p. 7; BAM 720, p. 1.

Second, the Department has failed to show that the Respondent made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. The the Department presented Respondent's application dated April 16, 2010, however, this occurred before Respondent's alleged fraud periods. See Exhibit 1.

Also, the Department presented Respondent's application dated October 7, 2011. See Exhibit 1. Still, this application was submitted between both alleged fraud periods. Moreover, Respondent did conduct FAP transactions in the State of Michigan issued by the same state in October 2011, which was during the time of application. See Exhibit 1. This shows that Respondent was residing in Michigan at the time of application. As such, both applications failed to show that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period.

Finally, the Department did present evidence that Respondent received FAP benefits in Florida from May 2011 to October 2011 and March 2012 to July 2012 and that he was issued Michigan benefits during a part of this time period as well. See Exhibit 1. However, the evidence presented does not establish by clear and convincing evidence that the Respondent intentionally withheld information to receive FAP benefits from more than one state. The evidence merely suggests that Respondent was issued benefits from out-of-state. As stated above, the Department failed to show evidence that the Respondent made a fraudulent statement or representation regarding his residence during the alleged fraud periods. Therefore, based on the above reasons, 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, pp. 15-16. 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. 16.

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

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 715 (May 2014), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (January 2011), p. 1. For FAP cases, 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.

A client error is present in this situation because the Respondent failed to report a change in residency in order to continue receiving FAP benefits from Michigan. The evidence presented that Respondent no longer resided in Michigan and he moved to Florida during the alleged fraud periods. Therefore, he was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits during this time period.

Applying the client error overissuance period, it is found that the appropriate OI period begin date is January 1, 2011 and March 1, 2012. See BAM 715, pp. 4-5.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan for January 2011 to March 2011 in the amount of \$600. See Exhibit 1. Also, Respondent was

issued \$1,200 in FAP benefits by the State of Michigan from March 2012 to August 2012. It should be noted that the Department's OIG report indicated that Respondent was issued \$1,600 for the time period of March 2012 to August 2012. See Exhibit 1. This was an improper calculation by the Department because the OI amount included an additional \$400. The appropriate OI amount for March 2012 to August 2012 is \$1,200. Therefore, the additional \$400 amount is subtracted from the total OI amount sought and the Department is entitled to recoup \$1,800 of FAP benefits it issued to Respondent for January 1, 2011 to March 31, 2011 and March 1, 2012 to August 31, 2012. BAM 715, pp. 4-6.

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. 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 \$1,800 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- reduce the OI to \$1,800 for the period January 1, 2011 to March 31, 2011 and March 1, 2012 to August 31, 2012, and initiate recoupment procedures in accordance with Department policy.



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

Date Signed: May 15, 2014

Date Mailed: May 15, 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]
[REDACTED]
[REDACTED]
[REDACTED]
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