

**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 27102
Issue No(s): 3005
Case No.: ██████████
Hearing Date: May 19, 2014
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 19, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulations 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) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

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 18, 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 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 December 28, 2010, 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 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 January 31, 2011
8. The OIG indicates that the time period they are considering the fraud period is January 1, 2011 through November 30, 2011.
9. During the alleged fraud period, Respondent was issued \$2,219.00 in FAP benefits from the State of Michigan.
10. During a portion of the alleged fraud period, Respondent was issued FAP benefits from the State of Mississippi.
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 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, 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 (January 2011), p. 4.

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 (January 2011), p. 6; 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 received Michigan-issued FAP benefits at the same time he used benefits issued by Mississippi. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2011), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purposes other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (September 2009), p. 2.

At the hearing, the Department established that Respondent used his FAP benefits issued by the State of Michigan exclusively in the State of Mississippi from January 31, 2011 through December 28, 2011. While this evidence may be sufficient to establish that Respondent received concurrent benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on December 28, 2010 in which Respondent acknowledged that he had received the Information Booklet advising him regarding Things You Must Do which explained reporting changes of address and reporting change in residency. Additionally, the Department presented correspondence from a Mississippi Department employee which showed that Respondent received FAP benefits in Mississippi from November 3, 2011 through April 30, 2012. Given that Respondent was required to report changes in residency but failed to do so and also applied for benefits in Mississippi while simultaneously receiving benefits in Michigan, the Department has established that Respondent intentionally misled the Department for the purpose of maintaining or preventing reduction of program benefits or eligibility.

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.

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 (October 2009), 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. 13.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a disqualification under the FAP program.

Overissuance

Department policy holds that a client cannot receive FAP benefits in more than one state for any month. BEM 222 (June 2011), p. 2. Further, 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.

In this case, the Department is seeking to recoup benefits issued in Michigan from January 1, 2011 through November 30, 2011. The Department alleged that the OI amount is \$2,219.00. The Department presented Respondent's benefit summary inquiry which showed the Michigan-issued FAP benefits received from January 1, 2011 through November 30, 2011. However, it appears that the Department included a \$19.00 supplement Respondent received in December 2010 when calculating the alleged OI amount of \$2,219.00. This amount should not have been considered as it is not within the fraud period. The benefit summary inquiry showed that between January 1, 2011 and November 30, 2011, Respondent received \$2,201.00 in Michigan issued FAP benefits, which included a \$1.00 supplement given in March 2011. Further, the Department presented Respondent's benefit purchase history which revealed that all purchases made from January 31, 2011 through December 28, 2011 were done so exclusively in Mississippi. Accordingly, the Department established that Respondent received an OI of FAP benefits from January 1, 2011 through November 30, 2011 in the amount of \$2,201.00.

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 committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$2,201.00 in FAP benefits from January 1, 2011 through November 30, 2011.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,201.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.



JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 9, 2014

Date Mailed: June 9, 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.

JAM/cl

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