

**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.: 2014-33314
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 4, 2014
County: Kalamazoo (00)

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 three-way telephone hearing was held on June 4, 2014, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

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 the Department establish, by clear and convincing evidence, that Respondent committed 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 April 2, 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 March 15, 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 no 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 December 2012.
8. The OIG indicates that the time period they are considering the fraud period is February 1, 2013, to November 30, 2013.
9. During the alleged fraud period, Respondent was issued \$1,989 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 Nevada.
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 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 (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 (November 2012), 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 (November 2012), 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 (October 2012), p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2013 to November 30, 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 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 March 15, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 9-26 and see also redetermination dated April 17, 2012, pp. 27-30. A review of Respondent's application/redetermination indicated that he reported a Michigan address. See Exhibit 1, pp. 10 and 27-29.

Second, the Department presented Respondent's mid-certification contact notice ("mid-certification") dated April 1, 2013, which occurred during the alleged fraud period. See Exhibit 1, pp. 31-34. In this case, Respondent reported a Michigan address and he submitted this document at the same time he conducted transactions out of state. See Exhibit 1, pp. 31-34.

Third, the Department presented Respondent's FAP transaction history. A review of the transaction history indicated he used his FAP benefits issued by the State of Michigan out of state in Nevada from December 14, 2012 to August 22, 2013. See Exhibit 1, pp. 37-38.

Fourth, the Department presented out-of-state documentation from Nevada dated December 5, 2013. See Exhibit 1, pp. 39-41. This documentation showed that Respondent received FAP benefits from the State of Nevada from June to December 2013. See Exhibit 1, p. 40. Moreover, the Department presented Respondent's benefits summary inquiries to show that he received FAP benefits issued by the State of Michigan from February to November 2013 (alleged OI period). See Exhibit 1, pp. 35-36. Based on this information, Respondent received dual assistance (Michigan and Nevada) from June to November 2013. See Exhibit 1, pp. 35-36 and 40.

At the hearing, Respondent testified that he did not intentionally commit an IPV (e.g., in order to receive FAP benefits from more than one state). At first, Respondent testified that he went to Nevada in December 2013 in order to get away from Michigan due to medical and/or personal issues and to also help a family member. Moreover, in January 2013, Respondent testified that he attempted to call his DHS caseworker multiple times (and throughout the alleged fraud period) to inquire if he could use his FAP benefits out of state. Respondent testified that he never received any response; however, learned from other relatives that he is able to do such transactions out of state. Thus, Respondent continued to use his Michigan issued FAP benefits out of state based on the information he received from his relatives. Hence, on April 1, 2013, Respondent testified that he did not update his address on the mid-certification (which was submitted during the alleged fraud period) because he thought he could conduct the transactions out of state.

However, the Department did question him that he indicated "no change" in the mid-certification where it stated to list if any person is temporarily away from home. See Exhibit 1, p. 31. Respondent testified that he did not read that section and/or

misinterpreted that section. It should be noted that Respondent testified that he never submitted a change report in writing to the Department.

Additionally, in June 2013, Respondent testified that he officially decided to become a resident of Nevada due to personal issues. Thus, Respondent testified that he applied for FAP benefits in Nevada in June 2013 due to medical insurance reasons. Respondent testified, though, that he did not receive his Nevada EBT card until July 2013. Finally, Respondent testified that he used his Nevada EBT card in July and August 2013.

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

First, the Department has 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 Department presented Respondent's mid-certification to show the fraudulent statement because it was submitted during the alleged fraud period. See Exhibit 1, pp. 31-33. Moreover, Respondent indicated a Michigan address, even though he was using benefits out of state. However, Respondent credibly testified that he did not intentionally commit an IPV in order to receive FAP benefits from more than one state. There is persuasive evidence that an overissuance is present due to his out-of-state usage. However, the evidence presented that there is not an IPV in this case. Respondent credibly testified the he attempted to notify the Department of his usage in Nevada, but without success. Moreover, Respondent testified that he believed he could continue the out-of-state usage due to information received from relatives.

Nevertheless, even though the mid-certification was contradictory to Respondent's testimony, the evidence presented does not establish by clear and convincing evidence that Respondent committed an IPV of his FAP benefits.

Second, the Department has to also show that Respondent received multiple FAP benefits simultaneously. See BEM 203, p. 1. The Department did present evidence from Nevada and Michigan, in which Respondent received FAP benefits simultaneously. See Exhibit 1, pp. 35-36 and 39-41. However, as stated above, it is found that an IPV is not present in this case.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information 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, 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 2012), 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 (November 2012), 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 Nevada during the OI periods. Respondent testified that he attempted to notify the Department, but without any success. However, the Department presented his mid-certification dated April 1, 2013. See Exhibit 1, pp. 31-34. This document reported a Michigan address for the Respondent, even though during the same time period, he

conducted transactions in Nevada. See Exhibit 1, pp. 37-38. 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 February 1, 2013. 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 February to November 2013 totaling \$1,989. See Exhibit 1, pp. 35-36. Thus, the Department is entitled to recoup \$1,989 of FAP benefits it issued to Respondent from February 1, 2013, to November 30, 2013. BAM 715, pp. 4-6. It should be noted that the OIG report indicated that Respondent had a balance on his Michigan EBT card, which was approximately \$595.83. See Exhibit 1, p. 3. However, the Department testified that the balance increased to approximately \$784.83 during the hearing. Nevertheless, the Department is entitled to recoup the \$1,989 of Respondent's FAP benefits in accordance with Department policy. 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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$1,989 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,989 for the time period of February 1, 2013 to November 30, 2013 and in accordance with Department policy.



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

Date Signed: June 16, 2014

Date Mailed: June 16, 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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