

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014 34441
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: May 29, 2014
County: Wayne County DHS 19

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 May 29, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], 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 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 benefits for 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 March 13, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having 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. Respondent was aware of the responsibility to report changes in residency to the Department.
5. Respondent did not have an 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 September 1, 2010 to December 30, 2011 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued [REDACTED] in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits.
8. At the hearing, the Department corrected the fraud period to begin September 1, 2010 rather than August 1, 2010 and thus corrected the overissuance amount from \$ [REDACTED] to the correct amount \$ [REDACTED].
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
10. This was Respondent's first alleged IPV.
11. 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 (May 2014), pp. 12-13.

There was some discussion on the record concerning the Department's efforts to determine and provide the most current address for Respondent in light of the allegations that Respondent used Department-issued FAP benefits out of state. Because the Notice of Disqualification sent to Respondent by the Michigan Administrative Hearing System (MAHS) was returned to MAHS as undeliverable, the IPV hearing proceeded because prior hearing packets were sent to the Respondent to two addresses and not returned prior to the MAHS notice being returned. See BAM 720, p. 12.

In this case, the Department alleged that Respondent committed an IPV because she continued to receive and use FAP benefits issued by the State of Michigan while out of state. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the hearing, the notice and documents were returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. At the hearing, the Department established that the address it provided was the best

available addresses for Respondent. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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 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 her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (2/1/14), 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. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (2/1/14), pp. 2-3.

The Department established that from July 9, 2010, Respondent used her FAP benefits issued by the State of Michigan exclusively out of state in Mississippi. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP 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 this case, the Department presented applications Respondent submitted to the Department on December 6, 2010 and January 12, 2011. The second application was completed while the Respondent had been using her benefits exclusively in Mississippi through November 30, 2010 and she reported a Michigan address on her application. Exhibit 1, pp. 76 (application) and pp. 45 (out of state use). The January 12, 2011 application was completed online and listed an [REDACTED] address. As further evidence of out of state residence, the Respondent was also the subject of an eviction action in Mississippi in November 2011. Exhibit 1 pp.26-27. While the first of these applications was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, it did not establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning her out-of-state move for the purpose of maintaining her Michigan FAP eligibility.

However, with regard to the second application (Jan. 12, 2011), the Respondent had been using her FAP benefits exclusively in Mississippi beginning July 9, 2010 and continued exclusive out of state use until November 30, 2010. During the period November 30, 2010 through April 7, 2011, the Claimant did not use her EBT card to purchase food. After the January 12, 2011 application, the Claimant was issued benefits but did not use her card to purchase food until April 2011. The FAP benefit summary established that the Claimant had no FAP benefits available to her from the January 12, 2011 application until March 14, 2011. On March 14, 2011, the Claimant was issued the following FAP benefits by the Department in the amount of \$ [REDACTED] and [REDACTED] for a total of [REDACTED] in FAP benefits. Exhibit 1 pp. 105. On April 7, 2011 when she began to use her EBT card again, she had \$ [REDACTED] on her EBT card and used the card in Mississippi. Thus, the Claimant did not receive any FAP benefits on her January 2011 application until March 14, 2011, which would explain why the card was not used.

Thereafter, another [REDACTED] in FAP benefits was issued to the Claimant for April 2011 on April 7, 2011. At no time during the period beginning July 9, 2010 through December 30, 2011, did the Claimant use her benefits in Michigan. The Claimant used her FAP benefits exclusively in Mississippi. Based upon this evidence, it is determined that the Department has established by clear and convincing evidence that the Claimant committed an intentional program violation when she reapplied for FAP benefits and listed a Michigan address. The FAP EBT transaction history supports that the only reason the gap in FAP benefit use occurred, is due to the fact that there was a delay by the Department in processing the January 2011 application, thus there were no benefits available for the Respondent to use. Nor is there any basis based upon FAP usage history to support a Michigan residency in January 2011. When benefits were available, the Respondent used her benefits in Mississippi.

This evidence is sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented her address to the Department for the purpose of maintaining her Michigan FAP eligibility while living in Mississippi.

Thus, the Department has established that Respondent committed an IPV of her FAP benefits.

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 (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 established that Respondent committed a FAP IPV. Therefore, Respondent is subject to a one-year disqualification from the FAP program.

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 client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from July 9, 2010 to December 30, 2011. In the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan and was was not eligible for FAP benefits issued by the Department.

In this case, the Department alleges that Respondent was overissued FAP benefits for the period between September 1, 2010 to December 30, 2011. The Department presented a benefit summary inquiry to support issuances during this period totaling

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Under Department policy, the calculation of the first month of the OI requires that the Department 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 this standard and in consideration of out-of-state use that began July 9, 2010, *the OI period begins September 1, 2010. Thus, the Department is not entitled to recoup or collect the August 2010 in FAP benefits issued to Respondent for ██████████. Removing these ██████████ in benefits results in the Department being entitled to recoup or collect \$11,543 of FAP benefits it issued to Respondent between September 1, 2010 and December 30, 2011.*

Therefore, the Department has established that it is entitled to collect or recoup from Respondent [REDACTED] in FAP benefits issued from September 1, 2010 to December 30, 2011.

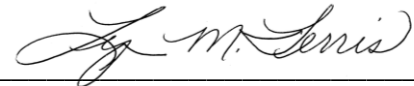
DECISION AND ORDER

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 committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP program for a period of 12 months.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 5, 2014

Date Mailed: June 6, 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.

LMF/tm

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