

**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.: 2014-34842
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 16, 2014
County: Ingham (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 telephone hearing was held on June 16, 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) 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 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 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 11, 2013, Respondent reported that she was a Michigan resident, but did not indicate if she intended to stay in Michigan.
5. On the Assistance Application signed by Respondent on October 12, 2012, Respondent reported that she intended to stay in Michigan.
6. Respondent was aware of the responsibility to report changes in her residence to the Department.
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. Respondent began using FAP FIP MA benefits outside of the State of Michigan beginning in July 2013.
9. The OIG indicates that the time period they are considering the fraud period is October 1, 2012 to December 31, 2012, and July 1, 2013 to December 31, 2013.
10. During the alleged fraud period, Respondent was issued \$1,502 in FAP FIP MA benefits from the State of Michigan.
11. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Florida.
12. This was Respondent's first second third alleged IPV.
13. 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 her FAP benefits because she 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 (September 2012 and July 2013), pp. 7 and 8. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7 and 9. These include, but are not limited to, changes in address and shelter cost changes that result from the move. BAM 105, p. 7 and 9.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (June 2011 and July 2013), 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, pp. 2 and 3. 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, pp. 3 and 4.

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 and July 2013), p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2012 to December 31, 2012, and July 1, 2013 to December 31, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes in residence and that she made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously.

First, the Department presented two of Respondent's applications dated October 12, 2012 and March 11, 2013, which acknowledged her obligation to report all changes in circumstances required. See Exhibit 1, pp. 9-39 and 47-66. It should be noted that the application dated October 12, 2012 was submitted during the first alleged fraud period. Nevertheless, a review of both applications indicated that Respondent reported that she received assistance from the State of Florida and moved to Michigan on October 12, 2012. See Exhibit 1, pp. 13 and 48.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 41-42. The FAP transaction history showed that from October 23, 2012 to June 22, 2013, Respondent used FAP benefits issued by the State of Michigan in Michigan (three transactions conducted in Florida). See Exhibit 1, pp. 41-42. Also, the FAP transaction history showed that from July 1, 2013 to September 17, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Florida. See Exhibit 1, p. 42.

Third, the Department presented out-of-state correspondence dated December 11, 2013, to show Respondent received FAP benefits simultaneously in Florida. See Exhibit 1, p. 44. The documentation confirmed that Respondent received FAP benefits in Florida from April 2012 to December 2012, and August 2013 to December 2013. See Exhibit 1, p. 44. Moreover, the Department presented Respondent's benefit summary inquiry to show that she received Michigan benefits from October 12, 2012, to December 31, 2012 and July 1, 2013, to December 31, 2013. See Exhibit 1, pp. 40 and 46. Thus, the evidence indicated that the FAP benefits were received simultaneously from October 12, 2012, to December 31, 2012 and August 1, 2013, to December 31, 2013.

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

The Department has failed to show that the Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. A review of both applications indicated that Respondent reported that she received assistance from the State of Florida and moved to Michigan on October 12, 2012. See Exhibit 1, pp. 13 and 48. This evidence presented that Respondent reported to the Department that she received assistance from Florida and that she did not purposely report inaccurate information to the Department. Instead, she reported that she received assistance from Florida.

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 705 (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 agency error.

An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) or the Department of Information and Technology staff or department processes. BAM 705, p. 1. Examples include available information was not used or was used incorrectly, etc...See BAM 705, p. 1.

An agency error is present in this situation because the Respondent reported that she received benefits from Florida, however, the Department failed to act on this reported information. See Exhibit 1, pp. 13 and 48. Respondent was not eligible for Michigan FAP benefits during the time period she was receiving FAP benefits from Florida. Therefore, Respondent was overissued Michigan FAP benefits for any period she was receiving concurrent benefits from Florida.

The overissuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12 month period is later. BAM 705, p. 5. To determine the first month of the overissuance period for changes reported timely and not acted on, the Department allows time for: the full standard of promptness (SOP) for change processing and the full negative action suspense period. BAM 705, p. 5.

As to the first OI period (October 1, 2012 to December 31, 2012), applying the agency error overissuance period, it is found that the appropriate OI period begin date is October 1, 2012. See BAM 705, p. 5. This is supported by the fact that Respondent received Florida benefits since April 2012. See Exhibit 1, p. 44.

As to the second OI period (July 1, 2013 to December 31, 2013), applying the agency error overissuance period, it is found that the Department applied the inappropriate OI period begin date of July 1, 2013. See BAM 705, p. 5. The appropriate OI begin date is August 1, 2013 because Respondent began receiving concurrent benefits on August 1, 2013. See Exhibit 1, p. 44. It should be noted that the FAP transaction history shows that exclusive usage in Florida for July 2013, however, actual concurrent benefits did not begin until August 2013. See Exhibit 1, p. 42. Thus, the second OI period begin date is August 1, 2013. See BAM 705, p. 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 the first OI period from October 12, 2012 to December 31, 2012, in the amount of \$324. See Exhibit 1, p. 46. As to the second OI period, the benefit summary inquiry showed benefits issued for August 1, 2013 to December 31, 2013, in the amount of \$978. See Exhibit 1, p. 40. Thus, the Department is entitled to recoup \$1,302 of FAP benefits it issued to Respondent for October 12, 2012 to December 31, 2012 and August 1, 2013 to December 31, 2013. BAM 705, p. 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 \$1,302 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- reduce the OI to \$1,302 for the period October 12, 2012 to December 31, 2012, and August 1, 2013 to December 31, 2013, and initiate recoupment procedures in accordance with Department policy.



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

Date Signed: June 23, 2014

Date Mailed: June 23, 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]