

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

IN THE MATTER OF:



Reg. No.: 14-001838
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: JULY 10, 2014
County: OAKLAND-DISTRICT 4

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 July 10, 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 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 April 30, 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 alleges that Respondent was overissued \$6243 in FAP benefits by the State of Michigan as follows: (i) \$976 for February 1, 2009 through July 31, 2009; (ii) \$3797 for November 1, 2009 through May 31, 2011; (iii) \$1390 for November 1, 2011 to May 31, 2012; and (iv) \$80 for April 1, 2013 to May 31, 2013.
7. This was Respondent's first alleged IPV.
8. 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.

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 received Michigan-issued FAP benefits when she was no longer a resident of Michigan. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (March 2013 and July 2013), 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 (November 2012), pp. 2-3; BEM 212 (October 2013), p. 3.

The Department established that from December 7, 2008 to July 16, 2009; from November 4, 2009 to May 18, 2011; from October 22, 2011 to May 22, 2012; and from February 27, 2013 to June 14, 2013, Respondent used FAP benefits issued to her by the State of Michigan in Florida, with minimal Michigan use during those periods. 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 IPV case that Respondent misrepresented her Michigan residency, in addition to the transaction history showing Respondent's out-of-state use of FAP benefits, the Department presented the redeterminations Respondent submitted to the Department on July 28, 2009, August 23, 2010, and August 22, 2012; a mid-certification report she submitted on July 18, 2011; and an online application she submitted on May 31, 2013. The Department pointed out that the August 23, 2010 redetermination, which identified a Michigan address and in which Respondent reported that there was no change in address, and the May 31, 2013 online application, in which Respondent asserted a Michigan address and stated that she was a resident of Michigan and lived in the home she identified as her address, were submitted during periods when Respondent was using her FAP benefits out of state and was consequently not living in Michigan.

The Department testified that it interviewed Respondent in connection with its investigation and she indicated that she was not aware that she could not use her Michigan-issued FAP benefits out of state. She reported that she went to Florida for four-month periods in the winter because the warm weather was better for her arthritis but she continued to maintain a Michigan driver's license and residency. The Department's Lexis Nexis search shows that Respondent had addresses in both Michigan and Florida during concurrent periods, consistent with her statements that she continued to maintain her Michigan residence even while in Florida. However, evidence that Respondent used her FAP benefits in Florida for an 18 month period, from November 4, 2009 to May 18, 2011, with use in Michigan on only two occasions during this span, was contrary to her explanation that she went to Florida for four-month spans because of her arthritis. Respondent did not participate in the hearing to explain her actions. The fact that she completed a redetermination on August 23, 2010 in which she alleged that there were no changes in address, at a time when she had used her FAP benefits in Florida for nine months before she submitted the redetermination and continued to use her FAP benefits in Florida for another nine months afterwards, were sufficient to establish by clear and convincing evidence that Respondent misrepresented her residency with the intent of maintaining her FAP eligibility.

Thus, the Department has established that Respondent committed an IPV concerning 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 has satisfied its burden of showing that Respondent committed a FAP IPV. Because this was Respondent's first IPV, 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. As discussed above, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from December 7, 2008 to July 16, 2009; November 4, 2009 to May 18, 2011; October 22, 2011 to May 22, 2012; and February 27, 2013 to June 14, 2013. This evidence was sufficient to establish that Respondent was not living in Michigan during those periods.

In establishing the OI periods resulting from periods that Respondent lacked Michigan residency, the Department testified that it applied the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period resulting in OI periods of (1) February 1, 2009 to July 31, 2009 for the out-of state use from December 7, 2008 to July 16, 2009; and (2) April 1, 2013 to May 31, 2013 for the out-of-state use from February 27, 2013 to June 14, 2013. BAM 720, p. 7. While the Department applied an OI period of November 1, 2011 to May 31, 2012 for the out-of-state use from October 22, 2011 to May 22, 2012, for the out-of-state use beginning October 22, 2011, the OI period began December 1, 2011 rather than November 1, 2011 as presented by the Department.

The Department testified that it did not apply the reporting, processing and negative suspense period for the out-of-state use beginning November 4, 2009 and applied an OI period of November 1, 2009 to May 31, 2011. However, because the transaction history shows that Respondent's out-of-state use during this period is nestled between two

periods of Michigan use lasting at least four months, it appears that Respondent was living in Michigan prior to the use beginning November 4, 2009 and the Department should have applied the reporting, processing, and negative action period to the OI begin date, which would then make the begin date January 2010.

The benefit issuance history presented by the Department established that Respondent was overissued FAP benefits totaling \$5646 as follows: (i) \$976 for February 1, 2009 to July 31, 2009; (ii) \$3400 for January 2010 to May 31, 2011; (iii) \$1190 for December 1, 2011 to May 31, 2012; and (iv) \$80 for April 1, 2013 to May 31, 2013.

Therefore, the Department has established that it is entitled to collect or recoup from Respondent \$5646 in FAP benefits issued to her during the period from February 2009 to May 2013.

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 \$5646 from the FAP program.

The Department is ORDERED to reduce the OI amount to \$5646 for the period from February 2009 to May 2013 and initiate recoupment and/or collection procedures in accordance with Department policy.

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



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **7/21/2014**

Date Mailed: **7/23/2014**

ACE / tlf

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

