

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001976
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 9, 2014
County: INGHAM

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 July 9, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], 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 over-issuance (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 May 1, 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 September 29, 2011, Respondent completed a Redetermination and indicated that she was homeless.
5. Respondent was aware of the responsibility to report changes in her 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 used FAP benefits outside of the State of Michigan from December 11, 2011 to May 22, 2012.
8. The OIG indicates that the time period they are considering the fraud period is February 1, 2012 to May 31, 2012.
9. During the alleged fraud period, the Department alleges that Respondent was issued \$800 in FAP benefits from the State of Michigan.
10. This was Respondent's first alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was 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), p. 12-13.

In this case, the Department alleged that Respondent committed an IPV based on concurrent receipt of FAP benefits. 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. At the hearing, it was established that the Notice of Hearing was 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 address for Respondent, based on a search of the Bridges system, as the Department testified that Respondent currently has an active case. 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 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 alleged that Respondent received FAP benefits from the State of Michigan between February 1, 2012 and May 31, 2012, and received food assistance benefits from the State of Kentucky during the same period. A person cannot receive FAP in more than one state for any month. BEM 222 (June 2011), p 2. The Department may verify out of state benefit receipt or termination 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.

The Department presented a Redetermination that Respondent submitted to the Department on September 29, 2011, prior to the alleged fraud period on which she indicated that she was homeless. (Exhibit 1, pp.12-15). While this is sufficient to establish that Respondent was advised of her responsibility to report changes in household circumstances, it does not establish by clear and convincing evidence that Respondent committed an IPV.

The Department established that from December 19, 2011 to May 22, 2012, Respondent used FAP benefits issued to her by the State of Michigan exclusively out of state in KY. (Exhibit 1, p.19). 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 and that she received FAP benefits in another state while receiving MI benefits.

In support of the contention that Respondent concurrently received food assistance benefits from both states during the same period, the Department presented a May 2012, DHS-OIG Paris Match which identified Respondent as receiving benefits in the State of KY while having an active case in MI. (Exhibit 1, p.17). The Department also presented a fax document from the State of KY Cabinet for Health and Family Services Department for Community Based Services which established that Respondent had been receiving SNAP benefits in the State of KY since March 2012 and that her case was certified through January 2013. (Exhibit 1, p.18.). The Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits in the

amount of \$800 by the State of Michigan from February 1, 2012 to May 31, 2012. (Exhibit 1, p.16).

The evidence presented was sufficient to show, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information to the Department for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP benefits. Thus, the Department satisfied its burden of establishing that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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 satisfied its burden of establishing that Respondent committed an IPV of FAP benefits involving concurrent receipt of benefits. Therefore, Respondent is subject to a ten-year FAP disqualification.

Overissuance

The Department has alleged an OI of FAP benefits resulting from Respondent's concurrent receipt of benefits. 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.

The Department alleged that Respondent was issued \$800 in FAP benefits by the State of Michigan from February 1, 2012 to May 31, 2012, and that because she was receiving food assistance benefits from the State of Kentucky at the same time, she was entitled to \$0 in such benefits during this period. As discussed above, because the Department has established that Respondent received FAP benefits from more than one state at the same time, the Department is entitled to recoup the \$800 in FAP benefits issued to Respondent during the fraud period.

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 \$800 from the FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$800 for FAP in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for 10 years.



Zainab Baydoun

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

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

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

ZB / 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:

