

**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.: 14-003283
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 14, 2014
County: KALAMAZOO

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 July 14, 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 May 29, 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 December 9, 2013, 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. The OIG indicates that the time period they are considering the fraud period is January 1, 2014 to May 31, 2014.
8. During the alleged fraud period, Respondent was issued \$945 in FAP FIP MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Florida.
10. This was Respondent's first second third alleged IPV.
11. 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.

In this case, the Department alleged that Respondent committed a FAP IPV. 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 mailing of the Notice of Hearing and accompanying documentation, it 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. 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 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 (January 2014), p. 9. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 10. These include, but are not limited to, changes in address and shelter cost changes that result from the move. BAM 105, p. 10.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (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, p. 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, p. 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 (such as a DHS-826 or 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 (July 2013), p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2014 to May 31, 2014. 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 December 9, 2013, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 16-39. A review of Respondent's application indicated a Michigan address, his intent to remain in Michigan, and that he is homeless. See Exhibit 1, pp. 17 and 32.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 10-14. The FAP transaction history showed that from January 1, 2013 to December 9, 2013, Respondent used FAP benefits issued by the State of Michigan in Michigan. See Exhibit 1, pp. 10-13. Then, the FAP transaction history showed that from January 3, 2014 to January 6, 2014, Respondent used FAP benefits issued by the State of Michigan out-of-state in Florida. See Exhibit 1, pp. 13-14. It should be noted that the Department also presented a document indicating the Respondent currently had a balance on his Electronic Benefit Transfer (EBT) card. See Exhibit 1, p. 15.

Third, the Department presented an out-of-state e-mail correspondence and accompanying documentation from the State of Florida. See Exhibit 1, pp. 40-43. The documentation confirmed that Respondent received FAP benefits in Florida from January 16, 2014 to February 20, 2014. See Exhibit 1, pp. 42-43. Moreover, the Department presented Respondent's benefit summary inquiry showing benefits issued from December 1, 2013 to May 31, 2014. See Exhibit 1, p. 9. As such, the evidence presented that Respondent received FAP benefits simultaneously (Michigan and Florida) from January 2014 to February 2014. See Exhibit 1, pp. 9 and 40-43.

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

First, the Department failed 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

application dated December 9, 2013, however, this occurred before Respondent's alleged fraud period. See Exhibit 1. In fact, the FAP transaction history showed Michigan usage on December 9, 2013. See Exhibit 1, p. 13.

Second, the Department did present evidence that Respondent received FAP benefits simultaneously (Michigan and Florida) from January 2014 to February 2014. See Exhibit 1, pp. 9 and 40-43. However, the evidence presented does not establish by clear and convincing evidence that the Respondent intentionally withheld information to receive FAP benefits from more than one state. The evidence merely suggests that Respondent was issued benefits from out-of-state. As stated above, the Department failed to show evidence that the Respondent made a fraudulent statement or representation regarding his residence during the alleged fraud period. Therefore, based on the above reasons, 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 (July 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 2014), 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 (October 2013), p. 3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 3.

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 began receiving benefits simultaneously (Michigan and Florida) from January 2014 to February 2014. See Exhibit 1, pp. 9 and 40-43. Therefore, he was 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 January 1, 2014. 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 January 2014 to May 2014 in the amount of \$945. See Exhibit 1, p. 9. As such, the Department is entitled to recoup \$945 of FAP benefits it issued to Respondent for January 1, 2014, to May 31, 2014. 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 \$945 from the following program(s) FAP FIP MA.

