

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201432858
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: July 3, 2014
County: Kent County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

**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 3, 2014, from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED] and her attorney [REDACTED]
[REDACTED]

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 Respondent, by clear and convincing evidence, commit 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 March 28, 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 January 30, 2012, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/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. Respondent began using FAP FIP MA benefits outside of the State of Michigan on April 8, 2012, and used her benefits exclusively in Ohio through April 18, 2012.
8. The OIG indicates that the time period they are considering the fraud period is April 1, 2012, through August 31, 2012.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP FIP MA benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Ohio, from April of 2012, through August of 2012.
11. This was Respondent's first second third alleged IPV.
12. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 (July 1, 2013), p. 10.

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 (July 1, 2013), p. 6; 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.

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 1, 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.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (July 2013), p. 1.

In this case, the Respondent acknowledged the responsibility to report any change of residency to the Department on her application for assistance dated January 30, 2012. The Department alleges that the Respondent lacked the intent to remain a Michigan resident from April 1, 2012, through August 31, 2012. The Department offered substantial evidence that the Respondent used her Food Assistance Program (FAP) benefits exclusively outside Michigan from April 8, 2012, through April 18, 2012. The Department offered substantial evidence that the Respondent applied for and was approved for food assistance from the state of Ohio from April of 2012, through August of 2012.

The Department's representative testified that the Respondent had no apparent physical or mental impairment that would limit the understanding or ability to report any changes to her circumstances that affected her eligibility to receive Food Assistance Program (FAP) benefits.

The Respondent's attorney argued that the Respondent's suffered from mental impairments during the period of alleged fraud that impaired her ability to understand the reporting requirements. The Respondent's attorney offered a finding by the Social Security Administration that the Respondent was totally disabled as of April 1, 2010, as a result of chronic obstructive pulmonary disease, degenerative disc disease, degenerative joint disease, affective disorder, anxiety disorder, and personality disorder.

This Administrative Law Judge finds that despite the impairments to the Respondent's ability to perform any work, the evidence on the record does not support a finding of an impairment to understand and fulfill the reporting requirements of the Food Assistance Program (FAP). The evidence supports a finding that the Respondent was capable of applying for Food Assistance Program (FAP) benefits and that she did not require a payee to manage these benefits.

A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. The Department will accept an individual's statement of intent to remain in Michigan unless the statement is inconsistent or conflicts with known facts. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. Department of Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2012), pp 1-8.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Human Services Bridges Administrative Manual (BAM) 105 (May 1, 2012), p 7.

The Department is required to act on changes reported by means other than a tape match within 15 workdays after becoming aware of the change. Department of Human Services Bridges Administrative Manual (BAM) 220 (July 1, 2012), p 5.

The Respondent testified that she reported to the Department that she would be leaving the state of Michigan and entering Ohio in April of 2012. The Department's representative testified that no records of the Respondent reporting her absence from Michigan could be located.

Leaving Michigan and exclusively using Michigan Food Assistance Program (FAP) benefits in another state is evidence that supports a finding of a lack of intent to remain a Michigan resident.

The Respondent used her Michigan Food Assistance Program (FAP) benefits exclusively in Ohio for a ten-day period starting on April 8, 2012. If the Respondent no longer had intent to remain a Michigan resident as of April 8, 2012, she would have until

April 18, 2012, to report this to the Department. If the Respondent had reported a change of residency on April 18, 2012, the Department would have had until May 3, 2012, to act on this information. Any changes to the Respondent's Food Assistance Program (FAP) eligibility would have taken place after May 3, 2012.

This Administrative Law Judge finds that the Respondent failed to establish that she intended to remain a Michigan resident for April of 2012.

Despite a lack of evidence of Michigan residency in April of 2012, the Department has failed to establish by clear and convincing evidence that the Respondent received an overissuance of Food Assistance Program (FAP) benefits from April 1, 2012, through May 31, 2012, because they were issued during the reporting time frame outlined in BAM 105 and BAM 220.

The Respondent does not dispute that she applied for and received food assistance from the state of Ohio. The Department alleges that the this request for food assistance in Ohio supports a finding that the Respondent intended to become a resident of Ohio, and was not eligible to receive Food Assistance Program (FAP) benefits from Michigan. The Department alleges that the Respondent was aware of her reporting duties and failed to report a change of residency for the purpose of receiving benefits she was not entitled to.

Department records indicate that the Respondent was issued Food Assistance Program (FAP) benefits from April 1, 2012, through August 31, 2012. Department records also indicate that the Respondent did not use her benefits after April 18, 2012, and until November 7, 2012. After November 7, 2012, the Respondent used her Food Assistance Program (FAP) exclusively within Michigan.

The Respondent testified that she was not aware that her Michigan Food Assistance Program (FAP) benefits continued to accumulate while she was in Ohio. The Respondent testified that she re-applied for Michigan Food Assistance Program (FAP) benefits upon her return to Michigan. The Respondent testified that she inquired about a surplus of Food Assistance Program (FAP) benefits that were available for her use upon returning to Michigan. The Respondent testified that she avoided using this surplus of Food Assistance Program (FAP) benefits until for at least six months when she assumed that she was entitled to them.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be

uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

This Administrative Law Judge finds that the Department has failed to establish by clear and convincing evidence that the Respondent intentionally withheld reporting a change of residency for the purpose of receiving Food Assistance Program (FAP) benefits that she would not have been entitled to receive otherwise. The Department has failed to establish an Intentional Program Violation (IPV) during the period of alleged fraud.

This Administrative Law Judge finds that the Respondent was not eligible for the Food Assistance Program (FAP) she was issued by Michigan from June 1, 2012, through August 31, 2013, because the evidence supports a finding that she was a resident of Ohio during this period. The Respondent testified that she reported leaving Michigan and her receipt of Ohio benefits to the Department upon her return to Michigan. The Respondent testified that she reported a surplus of Food Assistance Program (FAP) benefits upon her return to Michigan. If the Department had acted on this information in a timely manner, the Respondent would not have received benefits that she was not eligible for.

An agency error overissuance is cause by incorrect actions by the Department. Department of Human Services Bridges Administrative Manual (BAM) 705 (July 1, 2012), p 1.

This Administrative Law Judge finds substantial evidence to support a finding that the Respondent received an overissuance of Food Assistance Program (FAP) caused by Department error from June 1, 2012, through August 31, 2012, and that the Department is required to recoup these benefits.

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 did **did not** commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of benefits as the result of **Department error** from the following program(s) FAP FIP MA.

3. The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period June 1, 2012, through August 31, 2012, and initiate recoupment procedures as a **Department error** overissuance in accordance with Department policy.



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

Date Signed: July 14, 2014

Date Mailed: July 15, 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.

KS/hj

cc:

