

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 14-003836
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 30, 2014
County: WAYNE-DISTRICT (19)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 30, 2014, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent, ██████████; and her witness/daughter, ██████████

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (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 benefits for
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 June 18, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having 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 FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in residence.
5. Respondent had did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the FAP fraud period is February 1, 2010 to October 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$7,180 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$7,180.
9. This was Respondent's first second third alleged IPV.
10. 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 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 failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2010), p. 1; see also BEM 220 (July 2013), 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 (January 2010), p. 2; see also 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. 2.

The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2010 to October 30, 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 intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

First, based on the Department's testimony, Respondent acknowledged her obligation to report changes in circumstances as required. See Exhibit 1, p. 1.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 10-21. The FAP transaction history showed that from January 19, 2010 to October 12, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Illinois (majority). See Exhibit 1, pp. 10-21. It should be noted that the FAP transaction history showed usage in Michigan throughout the alleged fraud period as well. See Exhibit 1, pp. 10-21. It should also be noted that the OIG report indicated that the transactions completed in Michigan showed the Electronic Benefits Transfer (EBT) card was "keyed" in. See Exhibit 1, p. 2. The OIG report further stated this meant that someone could have used the card without the card/card holder being present in Michigan. See Exhibit 1, p. 2.

Third, the Department presented Respondent's LexisNexis report, which reported two Illinois addresses for the Respondent. See Exhibit 1, pp. 26-43.

Fourth, the Department testified that it visited Respondent's Michigan address on two separate occasions for the purpose of verifying her Michigan residency. See Exhibit 1, p. 2. On October 21, 2013, the OIG agent performed the first address verification and discovered the property to be a single family home currently rented by another individual. See Exhibit 1, p. 2. Furthermore, the OIG report indicated that the renter knew the Respondent, she did not live with her in the home, and that she does stay in Chicago, Illinois with her children for periods at a time. See Exhibit 1, p. 2.

Then, on October 22, 2013, the OIG report indicated that the Respondent contacted the OIG agent and stated she was living in Chicago, Illinois with her daughter and son. See Exhibit 1, p. 2. Moreover, the OIG report stated Respondent sometimes travels back to Michigan, but did not state where she stays. See Exhibit 1, p. 2.

On June 5, 2014, the OIG agent performed a second visit and the OIG report indicated that the renter stated Respondent was not staying in the home during the time she claimed to in Michigan. See Exhibit 1, p. 2. At this time, the OIG agent located in the backyard of the home a small travel trailer and the renter indicated that Respondent lived in it during the summer months and lived in Illinois during the winter months with family. See Exhibit 1, p. 2. On the visit for June 5, 2014, the OIG agent took pictures of the small travel trailer, which showed that it was covered. See Exhibit 1, pp. 44-45. During the hearing, the Department testified that it discovered the renter was related to the Respondent and/or witness.

At the hearing, Respondent testified that she did not intentionally defraud the State of Michigan and/or the Department (i.e., intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility).

First, Respondent did not dispute that she conducted a majority of the transactions in Illinois. However, Respondent testified that during the alleged fraud period she was a Michigan resident. Respondent testified that she resided in the trailer, visited her

doctors in Michigan, and also held a State of Michigan identification card (because she did not drive).

Second, Respondent testified her her son and daughter (who is present at the hearing) resided in Illinois. Respondent testified that her children would commute her back and forth to Illinois and Michigan. Respondent further testified that she would stay in Illinois because her children would take care of her due to medical conditions. Respondent's daughter confirmed that she did drive her mother to/from Illinois and Michigan and acknowledged that they would watch her mother due to medical conditions.

Third, Respondent testified that she did recall seeing the OIG agent in October 2013; however, did not receive any notice of his visit. Thus, Respondent testified she did not know who the OIG agent was and did not speak to him on that date. Also, Respondent's daughter testified that her mother's EBT card magnetic strip was broken, thus, the number had to be "keyed" in manually.

In summary, Respondent argued that she was a Michigan resident during the alleged fraud period and only staying in Illinois because her family took care of her due to medical reasons.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. First, Respondent credibly testified that she did not intentionally defraud the State of Michigan and/or the Department (i.e., intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility).

Second, the Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the LexisNexis report, visit at the Michigan residence/pictures, and the FAP transaction history. However, this evidence failed to show that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move 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 720, p. 8.

At the hearing, the Department presented Respondent's FAP transaction history that showed that from January 19, 2010 to October 12, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Illinois (majority). See Exhibit 1, pp. 10-21. It should be noted that the FAP transaction history showed usage in Michigan throughout the alleged fraud period as well. See Exhibit 1, pp. 10-21.

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.

In this case, the Department has failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of \$7,180. Department policy does not prohibit out-of-state usage when the individual intends on coming back. Respondent credibly testified she was a resident of Michigan during the alleged fraud/OI period and only purchased food items in Illinois because her family members took care of her when she stayed with them in that state. As such, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits and an overissuance is not present in this case.

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 has not established by clear and convincing evidence that Respondent committed an IPV.

