

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

IN THE MATTER OF:

██████████
██
██

Reg. No.: 14-004457
Issue No.: 3005
Case No.: ██████████
Hearing Date: October 02, 2014
County: Kent (00-Franklin)

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 October 2, 2014, from Detroit, Michigan. The Department was represented by ██████████
██ 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 June 24, 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 address and 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. Between February 14, 2012, and June 30, 2013, the Department alleges Respondent was issued \$3,310 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits during this time period.
7. The Department alleges that Respondent received a FAP OI in the amount of \$3,310.
8. This was Respondent's first alleged IPV.
9. 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 prior to October 1, 2014 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 concerning his FAP benefits because he intentionally misrepresented his residency in order to receive FAP benefits from the State of Michigan. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2012 and March 2013), p. 1. For FAP purposes, 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. 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 (October 2011 and November 2012), pp. 2-3.

The Department presented a transaction history showing Respondent's use of his Michigan-issued FAP benefits by date and location. This evidence established that, from November 16, 2012, to June 27, 2013, Respondent used FAP benefits issued to him by the State of Michigan primarily out of state, with Michigan use limited to single transactions on February 20, 2012; March 20, 2012; April 14, 2012; September 16, 2012, and September 17, 2012. While this evidence may be sufficient to establish that Respondent did not reside in Michigan and may not be 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.

In support of its IPV case against Respondent, in addition to the transaction history showing Respondent's out-of-state use of FAP benefits, the Department presented the September 22, 2010, application Respondent submitted to the Department. At the time Respondent submitted this application, he identified a Michigan address as his residence. His transaction history shows that he was using his benefits primarily in Michigan at the time he submitted his application and was approved for benefits and for more than a year afterwards. Therefore, the evidence does not support a finding that Respondent misrepresented his Michigan residency on the application.

While the application advised Respondent of his obligation to report household changes, the fact that Respondent failed to report his out-of-state move did not establish by clear and convincing evidence that he **intentionally** misrepresented or withheld information concerning his residency for the purpose of maintaining FAP eligibility in the State of Michigan. Although the benefit issuance summary presented by the Department shows that there was an initial issuance of FAP benefits on February 16, 2012, leading to the possibility that Respondent completed a new application at that time, the Department testified it did not have any documentation Respondent completed and submitted to the Department during the period he was using his Michigan-issued FAP benefits out of state in which he identified a Michigan address.

Therefore, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV concerning his FAP case.

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. 13.

In this case, the Department failed to satisfy its burden of showing that Respondent committed an FAP IPV. Therefore, Respondent is **not** subject to a 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 FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges an FAP OI of \$3,310 for February 1, 2012, to June 30, 2013, based on Respondent's lack of Michigan residency. As discussed above, a client must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220, p. 1. The FAP transaction history showing that Respondent was using his FAP benefits primarily [REDACTED] from November 16, 2011, to June 27, 2013, with only limited use in Michigan, was sufficient to establish, in the absence of any contrary evidence, that Respondent was not residing in Michigan during that period. BEM 212, p. 3.


In consideration of out-of-state use that began November 16, 2011, the Department could properly begin the OI period in February 2012. BAM 720, p. 7. The benefit summary inquiry presented by the Department showed that, between February 14, 2012, and June 30, 2014, Respondent received \$3,310 in FAP benefits. Because Respondent was lacked Michigan residency during this period, the Department is entitled to recoup and/or collect \$3,310 from Respondent for overissued FAP benefits during this 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, if any, concludes that:

1. The Department has **not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$3,310.

The Department is ORDERED to initiate recoupment procedures for the amount of \$3,310 in accordance with Department policy.


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

Date Signed: **10/6/2014**

Date Mailed: **10/7/2014**

ACE / pf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]