

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

IN THE MATTER OF:

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

Reg. No.: 14-004514
Issue No.: 3005
Case No.: ██████████
Hearing Date: October 02, 2014
County: Kent (00-Franklin)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

**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 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 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. Respondent was aware that he could not receive dual assistance, and had no apparent physical or mental impairment that would limit this understanding.
5. The OIG indicates that the time period they are considering the fraud period is May 1, 2012, to November 30, 2012.
6. During the fraud period, the Department alleges that Respondent was receiving food assistance benefits issued by [REDACTED] while receiving FAP benefits issued by the State of Michigan.
7. During the fraud period, Respondent was issued \$1,400 in FAP benefits from the State of Michigan, and the Department alleges he was eligible to receive \$0 in FAP benefits.
8. This was Respondent's first alleged IPV.
9. 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 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.

In this case, the Department alleged that Respondent committed an IPV because he received FAP benefits issued by the State of Michigan while receiving food assistance from [REDACTED]. The Michigan Administrative Hearing System (MAHS) notified Respondent of the current IPV hearing by mailing via first class mail a Notice of Hearing to the address identified by the Department as Respondent's address. Before the hearing, the Notice was returned to MAHS by the United States Postal Service as undeliverable. At the hearing, the Department testified that, although Respondent was no longer active for Michigan benefits, it identified the address Respondent had previously provided to the Department as his best available address. The Department further testified that it was unable to obtain a more current address for Respondent from [REDACTED] authorities, and, although it conducted a Lexis-Nexis database search to determine if a better address was available for Respondent, none was identified. When notice of an 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. Because the Department's investigation led it to conclude that the address provided for the Notice of Hearing was the best available address for Respondent, the hearing 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 because he received FAP benefits from the State of Michigan at the same time he received food assistance benefits from [REDACTED]. A person cannot receive FAP in more than one state for any month. BEM 222 (June 2011 and November 2012), p. 2.

In support of its IPV allegations, the Department presented (i) an application Respondent submitted on November 18, 2011, in which he provided a Michigan address as his home address and notified the Department that he had previously received assistance from [REDACTED]; (ii) an email from the [REDACTED] (HHSC) on HHSC letterhead in response to the Department's May 2, 2014, email inquiry concerning Respondent, identified by name, birthdate and social security number, showing that Respondent was issued food assistance benefits by [REDACTED] from March 7, 2012, to September 30, 2012, and from November 7, 2012, to March 31, 2012; (iii) a transaction history from the HHSC showing that Respondent's [REDACTED] food benefits were used [REDACTED] between March 9, 2012, and December 16, 2012; (iv) a transaction history showing that Respondent's Michigan-issued FAP benefits were used almost exclusively in Michigan between November 19, 2011 and November 20, 2012; and (v) a benefit summary inquiry showing that the Department issued FAP benefits to Respondent between April 1, 2012, and November 30, 2012.

The evidence presented establishes that, between April 1, 2012, and September 30, 2012, and in November 2012, Respondent received Michigan-issued FAP benefits and, during the same period, received food assistance benefits issued by [REDACTED]. The evidence also established that the benefits from both states were used in each respective state. The evidence was sufficient to show, by clear and convincing evidence, that Respondent received food benefits from two different states for several

months and, as such, intentionally withheld or misrepresented information to the Department for the purpose of maintaining his FAP eligibility in the State of Michigan.

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.

Because the Department has established that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits, Respondent is subject to a ten-year disqualification from the FAP program.

Overissuance

When a client group receives more benefits than 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.

Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he received food assistance benefits issued by the State of Texas. BEM 222, p. 2. In this case, the Department alleges that Respondent received food benefits [REDACTED] between May 1, 2012, and November 2012 and, as such, was ineligible for the \$1,400 in FAP benefits issued to him by the State of Michigan during that period. The Department presented a benefits issuance summary showing that between May 1, 2012, and November 30, 2012, Respondent received \$1,400 in FAP benefits. Although the Department alleges that there was concurrent receipt of benefits during all the months between May 2012 and November 2012, the email from [REDACTED] HHSC shows that Respondent did not receive food benefits from [REDACTED] for the month of October 2012. Therefore, there was no concurrent receipt of food benefits in October 2012. Removing the \$200 in FAP benefits issued to Respondent in October 2012 reduces the FAP OI amount to \$1,200.

Therefore, the Department is entitled to recoup and/or collect from Respondent the entire \$1,200 in FAP benefits issued to him by the State of Michigan from May 2012 to September 2012 and in November 2012.


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 received an OI of FAP program benefits in the amount of \$1,200.

The Department is ORDERED to reduce the OI to \$1,200 for the period May 2012 to November 2012, and initiate recoupment and/or collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.


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: 