

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

IN THE MATTER OF:

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

Reg. No.: 14-004819
Issue No.: 3005
Case No.: ██████████
Hearing Date: October 02, 2014
County: Wayne (35-Redford)

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 ██████████

████████████████████ Participants on behalf of Respondent included: Respondent and ██████████

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 25, 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. Between October 1, 2011, and March 31, 2012, the Department alleges Respondent was issued \$1,167 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits during this time period.
5. Between February 1, 2014, and May 31, 2014, the Department alleges Respondent was issued \$680 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits during this time period.
6. The Department alleges that Respondent received an FAP OI in the total amount of \$1,847.
7. This was Respondent's first alleged IPV.
8. 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.

For hearing requests prior to October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking overissuances 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 her FAP benefits because she intentionally misrepresented her 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 2011 and

February 2014), 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 February 2014), p. 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 September 18, 2011, to March 13, 2012, and from February 6, 2014, to May 16, 2014, Respondent used FAP benefits issued to her by the State of Michigan exclusively out of state. 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 online application Respondent submitted to the Department on July 9, 2013. At the time Respondent submitted this application, she identified a Michigan address as her residence. Her transaction history shows that she was using her Michigan-issued FAP benefits in Michigan for several months prior to, and several months after, she submitted the application. Therefore, the application does not support a finding that Respondent misrepresented her Michigan residency on the application.

While the application advised Respondent of her obligation to report household changes, the fact that Respondent failed to report her out-of-state move did not establish by clear and convincing evidence that she **intentionally** misrepresented or withheld information concerning her residency for the purpose of maintaining FAP eligibility in the State of Michigan. Respondent testified at the hearing that she did not realize that she could not use her FAP benefits out of state. The Department did not present any documentation Respondent submitted to the Department alleging that she was living in Michigan during the periods she was using her benefits out of state. In the absence of such evidence, the Department failed to establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning her residency for the purpose of maintaining her Michigan FAP eligibility. Furthermore, Respondent's daughter presented evidence that Respondent had a limited education and mental impairments due to dementia and Alzheimer's. Therefore, the Department failed to establish that Respondent had the understanding of her responsibility to report changes in address and residency to the Department, further weakening the Department's IPV case against Respondent.

Therefore, the Department has failed to establish that Respondent committed an IPV concerning her FAP 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. 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 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 \$1,167 for October 1, 2011, to March 31, 2012 (First OI Period), and of \$680 for February 1, 2014, to May 31, 2014 (Second OI Period), 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 her FAP benefits [REDACTED] from September 18, 2011, to April 3, 2012, and from February 6, 2014, to May 16, 2014, periods in excess of thirty days, was sufficient to establish that Respondent was not residing in Michigan during those periods. BEM 212, p. 3.

To determine the first month of the OI period, Department policy requires that the Department apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7. Applying this standard and in consideration of out-of-state use that began September 18, 2011, the first month of the First OI Period was November 2011. For the out-of-state use that began February 6, 2014, the first month of the Second OI Period was April 2014. Therefore, the Department's calculation of the OI must exclude the FAP issuances to Respondent of \$200 for October 2011, \$170 for February 2014 and \$170 for March 2014. This reduces the FAP OI for the First OI Period to \$967 and the FAP OI for the Second OI Period to \$340.

Thus, the Department is entitled to recoup and/or collect \$1,307 from Respondent for overissued FAP benefits between November 2011 and March 2012 and between April 2014 and May 2014.

During the hearing, Respondent's daughter expressed concerns that any OI Respondent was required to repay would lead to a financial hardship. The Department can compromise (reduce or eliminate) an OI if it is determined that a household's **economic** circumstances are such that the OI cannot be paid within three years. BAM 725 (July 2014), p. 16. A request for a policy exception must be made from the recoupment specialist to the Fraud and Recoupment Administration office outlining the facts of the situation and the client's **financial** hardship. The deputy director of the DHS Fraud and Recoupment Administration has final authorization on the determination for all compromised claims. BAM 725, p. 16.

Respondent is advised to contact the Department for assistance in establishing a financial hardship to reduce or eliminate her OI. Respondent is also advised that, if she becomes an active recipient of FAP benefits, an OI may be recouped through a portion of issued benefits. BAM 725, p. 7.

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 did receive a FAP OI in the amount of \$1,307.

The Department is ORDERED to reduce the OI to \$1,307 for the period November 2011 to March 2012 and for April 2014 to May 2014, and initiate recoupment and/or collection procedures, subject to any compromise, 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]
[REDACTED]