

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

IN THE MATTER OF:



Reg. No.: 14-005075
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 9, 2014
County: CLARE

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 9, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). 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 27, 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 circumstances 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. The Department's OIG indicates that the time period it is considering the fraud period is March 1, 2013 to July 31, 2013 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$3215 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3215.
9. This was Respondent's first alleged IPV.
10. 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 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 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 received food assistance benefits from the State of Oklahoma at the same time that she received FAP benefits from the State of Michigan. The Department also alleges that Respondent committed an IPV because she misrepresented her residency and continued to receive and use FAP benefits from the State of Michigan while residing out of state.

With respect to the dual assistance issue, the Department contended that Respondent received food assistance benefits from the State of Oklahoma from April 1, 2013 to June 30, 2013, and that during this time, she was also receiving FAP benefits issued by the State of Michigan. A person cannot receive FAP benefits in more than one state for any month. BEM 222 (March 2013), p. 2. The Department may verify out-of-state benefit receipt by (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 3.

The Department presented an assistance application signed by Respondent on October 16, 2012, which although is sufficient to establish that Respondent was advised of her responsibility to report changes in household circumstances, does not establish by clear and convincing evidence that Respondent committed an IPV.

In determining that Respondent received dual food benefit assistance, the Department made collateral contacts with authorities in Oklahoma. The Department presented email communications from authorities in Oklahoma which identify Respondent by name, date of birth and social security number as having applied for food assistance in April 2013 and having received food assistance benefits in the State of Oklahoma, from April 2013, until the collateral contact was made in June 2013. The emails also establish that Respondent reported to the Oklahoma authorities that she had moved to Oklahoma with her family in January 2013 and that on her April 2013 application for food assistance in Oklahoma, Respondent failed to report that she had lived in any other state in the twelve months prior. (Exhibit 1, pp. 40-44).

The Department also presented a FAP benefit summary inquiry establishing that Respondent was issued FAP benefits from the State of Michigan from January 1, 2013 through July 31, 2013, as well as a FAP transaction history showing that from January 19, 2013 to July 8, 2013, Respondent used FAP benefits issued to her by the State of Michigan exclusively out of state, in Oklahoma, with the exception of a few transactions made in Utah.

The Department's evidence was sufficient to establish, by clear and convincing evidence, that Respondent received FAP benefits from two states from April 2013 to June 2013 and that she misrepresented circumstances of her residency to obtain multiple FAP benefits simultaneously. Therefore, the Department has established that Respondent committed an IPV of her 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. 15. 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. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, and lifetime disqualification for the third IPV. A client will be disqualified for ten years for a FAP concurrent receipt of benefits if fraudulent statements were made regarding identity or residency; see BEM 203. BAM 720, p. 16.

In this case, the Department satisfied its burden of establishing that Respondent committed an IPV of FAP benefits involving concurrent receipt of benefits. Therefore, Respondent is subject to a ten-year FAP disqualification.

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 that Respondent received an OI of FAP benefits on the basis that she no longer resided in Michigan but continued to receive and use Michigan issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 2013), p. 1. 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 (November 2012), pp. 2-3.

At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from January 9, 2013 to July 8, 2013. In the absence of any contrary evidence, this established that Respondent did not reside in Michigan and was not eligible for any FAP benefits issued by the Department during this period.

The Department alleges that Respondent was issued \$3215 in FAP benefits during the period between March 1, 2013 and July 31, 2013 and that because Respondent lacked Michigan residency, she was eligible for \$0 during this time. The Department presented

a benefit summary inquiry to support issuances during this period and properly calculated the first month of the OI period to begin March 1, 2013, (see BAM 720, p. 7). Because the Department established that Respondent was entitled to \$0 during the fraud period based on her lack of Michigan residency and concurrent receipt of FAP benefits, the Department is entitled to recoup or collect the \$3215 in FAP benefits issued to Respondent from March 1, 2013 to July 31, 2013.

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$3215 from the FAP.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$3215 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of 10 years.



Zainab Baydoun

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

Date Signed: **10/17/2014**

Date Mailed: **10/17/2014**

ZB / cl

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:

