

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 14-005464
Issue No.: 3005
Case No.: ██████████
Hearing Date: October 13, 2014
County: KENT (1)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 13, 2014, from Detroit, Michigan. The Department was represented by ██████████, 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (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 30, 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 FIP benefits issued by the Department.
4. Respondent was a recipient of FAP benefits issued by the Department.
5. Respondent was aware of the responsibility to report changes in circumstances.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the FIP fraud period is May 1, 2012 through July 31, 2012 (FIP fraud period)
8. The Department's OIG indicates that the time period it is considering the FAP fraud period is May 1, 2012 through September 30, 2012 (First FAP fraud period).
9. The Department's OIG indicates that the time period it is considering the FAP fraud period is March 1, 2013 through March 31, 2013 (Second FAP fraud period).
10. During the FIP fraud period, Respondent was issued \$474.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
11. During the First FAP fraud period, Respondent was issued \$1,000.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
12. During the Second FAP fraud period, Respondent was issued \$196.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
13. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$474.00.
14. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,196.00.
15. This was Respondent's first alleged IPV.
16. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 (December 2011), p. 10.

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 (December 2011), p. 6; 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.

FIP and FAP IPV 5/1/2012 – 7/31/2012

In this case, the Department alleged that Respondent committed an IPV of her FIP and FAP benefits from May 1, 2012 through July 31, 2012 because she failed to notify the Department that her brother was no longer in the home. The Department testified that Claimant was only eligible to receive FIP benefits based upon her brother living in the home as she was a disqualified adult.

Respondent submitted a Semi-Annual Contact Report on February 8, 2012 which indicated that her brother lived in the home. On August 21, 2012, Respondent submitted a Redetermination in which she reported that her brother was out of the home. The Eligibility Summary presented by the Department revealed that during May, June and July 2012, Respondent received \$158.00 each month as a result of her brother living in the home.

The Department provided evidence that Respondent's brother had applied for and began receiving FAP benefits in Wisconsin from March 2012 through August 2012. Further, Respondent's brother's transaction history revealed that he used FAP benefits in Wisconsin from March 12, 2012 through April 13, 2012. Respondent's brother used his FAP benefits in Michigan from April 14, 2012 through June 8, 2012. Respondent's brother then used his benefits in Wisconsin from June 9, 2012 through August 10, 2014.

The transaction history does not provide conclusive history that Respondent should have known that her brother was out of the home. It appeared that he traveled back and forth. Respondent reported that her brother was out of the home in August 2012 presumably when she knew he was not returning to her home. Therefore it is found that the Department failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits and therefore did not commit an IPV of FIP and FAP benefits during this period.

FAP IPV 3/1/31 – 3/31/2013

In this case, the Department alleged that Respondent committed an IPV of her FAP benefits because she also applied for FAP benefits in Wisconsin. While it is true that she applied for benefits in March 2013, the Department presented evidence that she was issued benefits and 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 for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2012), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for 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 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 2011), p. 4.

At the hearing, the Department established that from January 14, 2013 through March 18, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively in the state of Wisconsin. The transaction history of Wisconsin benefits shows usage beginning April 2013. It is therefore found that Respondent was actually issued benefits in March 2013 and as such failed to establish that she committed an IPV during this period.

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. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, BAM 720, p. 13. 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. Department policy holds that benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 (June 2011), p. 1.

In this case, the Department is requesting a ten year disqualification because it alleges that Respondent received benefits during the same time period in both Michigan and Wisconsin. A review of the benefits issuance summary reveals that Respondent's

Michigan issued FAP benefits ended on March 31, 2013. The transaction history presented by the Department revealed that Respondent did not receive benefits in Wisconsin until April 2013, which is outside any of the alleged fraud periods and after benefits closed in Michigan. It is therefore found that Respondent did not receive concurrent benefits. Because the Department failed to establish a concurrent receipt of benefits and because the Department failed to establish that Respondent committed an IPV, she is not subject to 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 Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident.

FIP and FAP IPV 5/1/2012 – 7/31/2012

The amount of a OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (July 2012), p. 5; BAM 705 (July 2012), p. 5. At the hearing, the Department testified that Respondent was issued FAP benefits from May 1, 2012 through September 30, 2012 in the total amount of \$1,000.00.

In support of its contention that Respondent was overissued FIP and FAP benefits during this period, the Department presented information that Respondent was not entitled to benefits if her brother was not residing in the home. As stated earlier, the Department failed to establish that Respondent's brother was out of the home permanently as he traveled back and forth from Michigan to Wisconsin. As such, the Department is not entitled to recoup benefits during this period.

FAP IPV 3/1/31 – 3/31/2013

In support of its contention that Respondent was overissued benefits during this period, the Department stated that Respondent was receiving benefits in Wisconsin in March 2013. As stated earlier, the Department failed to prove that Respondent was receiving benefits from both states in March 2013. However, the Department did establish that Respondent was only entitled to benefits if her brother was residing in the home. Evidence was presented sufficient to establish that Respondent's brother was not in the home and therefore she was not entitled to benefits. Therefore, the Department has established it is entitled to recoup benefits in the amount of \$196.00 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:

