

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

**IN THE MATTER OF:**



Reg. No.: 14-005484  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: October 13, 2014  
County: WAYNE (17)

**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 [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 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 FAP benefits issued by the Department.
4. On November 1, 2011, Respondent completed an application for FAP benefits which advised her of her responsibility to report changes in household circumstances, such as a change in residence.
5. Respondent had no 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 February 1, 2012 through July 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$6,439.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2,202.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$4,237.00.
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 (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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she 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 purposes other than a vacation, even if she 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. 2.

At the hearing, the Department established that on four separate periods during February 2012 through July 2013 Respondent used her FAP benefits issued by the State of Michigan out of state. The out-of-state usage included Ohio and New York. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer 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 contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on November 1, 2011 in which Respondent acknowledged that she had received the Information Booklet advising her regarding Things You Must Do which explained reporting changes of address and reporting changes in residency. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits. The transaction history reveals that Respondent periodically returned to Michigan for short periods of time. Additionally, Respondent did not submit an application stating that she resided in Michigan during the alleged fraud period. The Department did not present any evidence in which Respondent communicated false information. Accordingly, it is found that the Department failed to show by clear and convincing evidence that Respondent intentionally withheld information for the purposes of maintaining 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. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 11. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 2009), 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 has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under 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 Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident.

The amount of a FAP 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 in the amount of \$6,439.00 from February 1, 2012 through July 31, 2013. In support of its contention that Respondent was overissued FAP benefits, the Department presented Respondent's FAP transaction history showing her use of FAP benefits issued by the State of Michigan out of state as follows:

Michigan usage	12/18/2011 – 12/22/2011	4 days
Ohio usage	12/22/2011 – 5/15/2012	221 days
Michigan usage	5/17/2012 – 5/23/2012	6 days
Ohio usage	5/26/2012 – 6/16/2012	21 days
Michigan usage	6/21/2012	1 day
Ohio usage	7/15/2012 – 9/20/2012	67 days
New York usage	9/23/2012 – 9/27/2012	4 days
Ohio usage	10/12/2012 – 10/14/2012	2 days
Michigan usage	10/15/2012 – 10/18/2012	3 days
Ohio usage	11/13/2012 – 11/18/2012	5 days
Michigan usage	11/22/2012 – 11/26/2012	4 days
Ohio usage	11/30/2012 – 12/16/2012	16 days
Michigan usage	1/13/2013 – 1/22/2013	9 days
Ohio usage	2/13/2013 – 4/30/2013	76 days
New York usage	5/13/2013 – 5/16/2013	3 days
Ohio usage	5/18/2013 – 5/27/2013	9 days
Michigan usage	5/30/2013 – 6/14/2013	15 days
Ohio usage	6/14/2013 – 7/18/2013	34 days

The Department's investigative report indicates that the lawful amount that Respondent was entitled to relating to her FAP benefits was \$2,202.00. However, the Department provided no evidence to support that Respondent was only entitled to \$2,202.00. The Department failed to provide budgets. The Department initially stated when it read the Hearing Summary into the record that the "[f]or purposes of this investigation, an 'all encompassing' alleged fraud period of 02/2012 – 07/2013 has been created..." However, the Department seemed to state later in the hearing that only the time periods in which Respondent was outside of Michigan for more than 30 days were the actual fraud periods.

Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the Recoupment Specialist (RS), whichever is later. BAM 715, p. 4. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 715, pp. 4-5. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, pp. 4-5.

If the fraud period was the all-encompassing timeframe of February 2012 through July 2013, then it would seem that the Respondent would not have been lawfully entitled to any FAP benefits and as such the OI would have been \$6,439.00. On the other hand, if only benefits received when Respondent was out of the state of Michigan for more than 30 days were calculated and allowing for the SOP, one would reach the following result:

12/22/2011 – 5/15/2012 – OI period would not begin until February 2012 and run through May 2012. Claimant received \$367.00 each month for a total of \$1,468.00.

7/15/2012 – 9/20/2012 – OI period would not begin until September 2012 which was the last month during this period. Respondent received \$367.00 in September 2012.

2/13/2013 – 4/30/2013 OI period would not begin until April 2013 which was the last month during this period. Respondent received \$367.00 in April 2013.

6/14/2013 – 7/18/2013 - OI period would not begin at all because the last Ohio usage ended 32 days after it began.

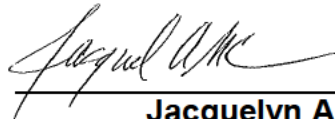
This would be calculated to a total potential OI of \$2,202.00 which is the exact amount in which the Department claimed to be the lawful amount in its Investigative Report. Because the Department failed to establish the amount OI, it is found that it failed to meet its burden with respect to any OI Respondent may have received.

**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. Respondent did not commit an IPV from February 1, 2012 through July 31, 2013 by clear and convincing evidence.
2. Respondent did not receive an OI of FAP benefits in the amount of \$4,237.00 from February 1, 2012 through July 31, 2013.

The Department is ORDERED to delete the OI and cease any recoupment action.



**Jacquelyn A. McClinton**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **11/5/2014**

Date Mailed: **11/5/2014**

JAM / 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:

