

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

IN THE MATTER OF:



Reg. No.: 14-006453
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 27, 2014
County: OAKLAND (2)

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 27, 2014, from Detroit, Michigan. The Department was represented by [REDACTED] liams, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance (OI) of Medical Assistance Program (MA) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving benefits for Food Assistance Program (FAP)?

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 July 15, 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 her residence 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 May 1, 2011 through March 31, 2012 (FAP fraud period).
7. During the FAP fraud period, Respondent was issued \$2,200.00 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,200.00.
9. The Department's OIG indicates that the time period it is considering the fraud period as September 24, 2011 (SER fraud period).
10. During the SER fraud period, Respondent was issued \$218.00 in SER 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. The Department alleges that Respondent received an OI in SER benefits in the amount of \$218.00.
12. This was Respondent's first alleged IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was received by Respondent.

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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

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 (January 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 (January 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 alleged 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 2011), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purposes 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 (September 2010), p. 2.

At the hearing, the Department established that from March 23, 2011 through March 6, 2012, Respondent used FAP benefits issued by the State of Michigan exclusively in the state of Kentucky. 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 April 14, 2010; a Mid-Certification Contact Notice submitted on February 23, 2011 and a Redetermination submitted on March 1, 2012. The Department asserted that with each of these

documents, 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 Department provided Respondent's transaction history beginning October 8, 2010. The transaction history revealed that Respondent used her FAP benefits in Michigan until March 19, 2011. Respondent testified that she reported her move to Kentucky on two separate occasions. There was no evidence provided that Respondent used her FAP benefits out of state from the date of the February 23, 2011 Mid-Certification Contact Notice through her last usage in Michigan on March 19, 2011. The Department did not provide any evidence that Respondent reapplied for Michigan issued FAP benefits while out of state or that she affirmatively communicated false information to the Department regarding her place of residence. Accordingly, it is found that the Department did not establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose 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. 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. 15.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. 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.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

FAP 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 2013), p. 6; BAM 705 (July 2013), p. 6. At the hearing, the Department alleged that the State of Michigan issued a total of \$1,980.00 in FAP benefits to Respondent from May 1, 2011

through March 31, 2012. The Department further alleged that Respondent was eligible for \$0.00 in FAP benefits during this period.

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 exclusively in Kentucky beginning March 23, 2011 and continued to do so until March 6, 2012. Further, the Department established that Respondent received FAP benefits issued by the State of Michigan in the amount of \$200.00 each month from May 2011 through March 2012 for a total of \$2,200. However, the Department confirmed that from May 2011 through March 2012, it had already recouped \$20.00 each month from Respondent for an issue unrelated to this IPV/OI hearing. Accordingly, it is found that there is a potential OI amount left owing in the amount of \$1,980.00.

Respondent testified that upon arrival to Kentucky, she cut up her Bridge Card containing the FAP benefits and threw it in the garbage. Respondent was unable to explain how someone could use the card for a year after it had been destroyed and discarded. Respondent testified that she did not report the card lost or stolen and as such no other cards were issued. Because Respondent's assigned case worker was not present to dispute that Respondent reported her change in residency, her statement that she reported the change is found to be credible. However, because no other cards were issued and the benefits were used, the undersigned does not find Respondent's statements credible that she cut up the Bridge Card, threw it in the garbage and never saw it again. As such, it is found that Respondent used her Michigan issued FAP benefits out of state after she had relocated to Kentucky. Respondent confirmed that as of March 23, 2011, she had been residing outside the State of Michigan for more than 30 days and as such, she was not entitled to Michigan issued FAP benefits. See BEM 212, p 2. Therefore, the Department has established it is entitled to recoup the \$1,980.00 in FAP benefits it issued to Respondent from May 1, 2011 through March 31, 2012.

SER Overissuance

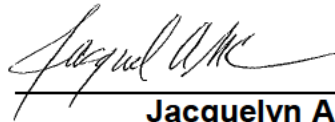
The Department alleged that Respondent received an OI of SER benefits in the amount of \$218.00. However, the only evidence presented by the Department was contained in the benefit summary which revealed that \$218.38 was paid in SER benefits on September 24, 2011 when Respondent was admittedly living in Kentucky. Respondent testified that she never applied for SER benefits and the Department failed to produce an application for SER benefits containing Respondent's signature. Therefore, it is found that the Department has not established that it is entitled to recoup the requested amount of \$218.00 in SER benefits allegedly issued on Respondent's behalf on September 24, 2011.

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 received an OI of FAP program benefits in the amount of \$1,980.00 from May 1, 2011 through March 31, 2012
3. The Department has not established that Respondent received an OI of SER program benefits on September 24, 2011.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$1,980.00 in accordance with Department policy relating to an OI of FAP benefits from May 1, 2011 through March 31, 2012.



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

Date Signed: **11/17/2014**

Date Mailed: **11/17/2014**

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:

