

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

IN THE MATTER OF:



Reg. No.: 14-004820
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: August 07, 2014
County: KALAMAZOO

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 August 7, 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 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:

10. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2010 through August 31, 2011 (fraud period).
11. During the fraud period, Respondent was issued [REDACTED] 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.
12. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
13. This was Respondent's first alleged IPV.
14. 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 (5/1/10), p. 9,10.

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 5/1/10), 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 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 (1/1/10), 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 (9/1/10), pp. 2.

The Department established that from October 23, 2010 through August 31, 2011, Respondent used FAP benefits issued to her by the State of Michigan exclusively out of state in Alabama, and on occasion Georgia, Tennessee, and Florida. 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.

Fraud: In support of its IPV case against Respondent, the Department presented an application Respondent submitted to the Department on October 1, 2010. In her application, Respondent indicated that she had been living with a friend and intended to stay in Michigan. She also provided a Michigan mailing address. She also identified herself as a Michigan resident. Respondent's FAP transaction history shows that Respondent used her Michigan-issued FAP benefits exclusively out of state in Alabama immediately after beginning to receive benefits after approval of her application. Exhibit 1, p. 29-34. The Respondent completed a Redetermination on September 1, 2011, sent the redetermination via fax from Alabama, and provided an Alabama phone number because her Michigan cell phone was not in service. This evidence was sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information concerning her residency for the purpose of establishing Michigan FAP eligibility. Thus, the Department has established that Respondent committed an IPV concerning her FAP benefits.

The undersigned considered the Respondent's written statements to the effect that she was traveling with her boyfriend who was a truck driver; however, the statements do not square with her Food Assistance usage, which began immediately out of state. At no time did the Respondent report that she would be out of the state more than 30 days, or that she would not be living in Michigan.

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 (10/1/09), 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 established by clear and convincing evidence that the Respondent committed an IPV of her Food Assistance benefits, and thus is entitled to a

finding of disqualification. Therefore, the Respondent is subject to a one-year disqualification.

Overissuance

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from October 23, 2010 to August 31, 2011. In the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan and was not eligible for FAP benefits issued by the Department.

In this case, the Department alleges that Respondent was overissued FAP benefits for the period between December 1, 2010 through August 31, 2011. The Department presented a benefit summary inquiry to support issuances during this period totaling [REDACTED]

Because the Department properly calculated the first month of the OI period to begin December 1, 2010 (see BAM 720, p. 6) and established the amount issued during the fraud period, the Department is entitled to recoup or collect \$1800 from Respondent for FAP benefits it issued to Respondent between December 1, 2010 through August 31, 2011.

Therefore, the Department has established that it is entitled to collect or recoup from Respondent [REDACTED] in FAP benefits issued from December 1, 2010 through August 31, 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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the following program(s) FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



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

Date Signed: **12/15/2014**

Date Mailed: **12/15/2014**

LMF / tm

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:

