

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 14-008954
Issue No.: 3005
Case No.: ██████████
Hearing Date: December 18, 2014
County: CALHOUN (DISTRICT 21)

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 December 18, 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 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:

1. The Department's OIG filed a hearing request on August 20, 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 address and reporting felony convictions for use, possession, or distribution of controlled substances.
5. Respondent did not have any known 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 [REDACTED] (fraud period).
7. 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
9. This was Respondent's first alleged IPV.
10. The Department also alleged that Respondent was not eligible to receive FAP benefits due to more than two drug felony convictions.
11. 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) , p. 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 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 the Respondent used her food assistance benefits outside the state of Michigan, in the state of Ohio, during the period [REDACTED] and that she failed to report that she was no longer living in Michigan in a timely manner, and thus committed an IPV of her food assistance benefits. This is the Respondents first alleged intentional program violation.

The Department alternatively seeks to permanently disqualify the Respondent for failing to report several drug felony convictions for the use, possession, or distribution of controlled substances. Department policy found in BEM 203 requires that a person who is been convicted of a felony for the use, possession, or distribution of controlled substances is permanently disqualified if they have been convicted two or more times in separate periods if both offenses occurred after August 22, 1996. BEM 203, (1/1/15) p. 4.

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 (3/1/13), p. 1. A person is considered a resident while living in Michigan for any purpose 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 thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (3/1/13), pp. 1-3.

As regards the Department's allegations of out-of-state use, the Department's proofs demonstrated that the Respondent clearly used her benefits in the state of Ohio on and after [REDACTED] and received food assistance through [REDACTED]. At no time did the Respondent report her change of address to the Department or advise the Department that she no longer resided in Michigan. During this period, the Respondent was receiving food assistance benefits from the State of Michigan. In addition, in an online application dated May 8, 2013, the Respondent indicated she was living in [REDACTED], Michigan during the period which her EBT usage of her food assistance card was exclusively in Ohio and thereafter until her FAP case was closed. 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 her Michigan fat eligibility. Thus, the Department has established that Respondent committed an IPV concerning her FAP Benefits.

As regards the Department's allegation that the Respondent failed to report felony convictions for drug possession, use, or distribution of controlled substances, the Department did not meet its burden of proof. The records provided by the Department were a summation/report of the Respondent's alleged criminal history. This evidence was unsatisfactory, as it is not qualified in any sense as an official record of felony convictions. There are other records which would have sufficiently established the Respondent's felony convictions which were not presented. Therefore, it is found Department is not entitled to a finding that the Respondent failed to report her alleged felony convictions, as her alleged convictions were not established by clear and convincing evidence.

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 (July 2013), 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. 16.

In this case, the Department has established that it is entitled to a disqualification of the Respondent from receiving food assistance as a result of committing an IPV of her food assistance benefits for failing to report her change of residency as set forth above.

As the Department did not meet its burden of proof to demonstrate the Respondent's alleged failure to report the felony drug convictions, the Department is not entitled to any 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.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 11. At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from [REDACTED] Exhibit 1 p. 45, 49. In the absence of any contrary

evidence, this evidence established that Respondent did not reside in Michigan and was was not eligible for FAP benefits issued by the Department.

In this case, the Department has established that during the period [REDACTED] [REDACTED] the Respondent received [REDACTED] in food assistance that she was not otherwise entitled to receive due to no longer being a Michigan resident. Exhibit 1, p. 45, 49. Therefore, the Department has established that it is entitled to collect or recoup from the Respondent [REDACTED] in food assistance benefits issued for this period.

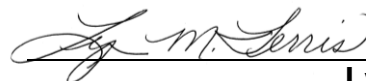
DECISION AND ORDER

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:

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: **12/30/2014**

Date Mailed: **12/30/2014**

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.

