

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

IN THE MATTER OF:

██████████
██████████
██

Reg. No.: 15-000116
Issue No.: 3005
Case No.: ██████████
Hearing Date: May 4, 2015
County: KENT-DISTRICT
(FRANKLIN)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a four-way telephone hearing was held on May 4, 2015, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included Respondent, ██████████ ██████████ and Respondent's witness (witness 1), ██████████.

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 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 January 2, 2015, 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 changes in residence.
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 March 1, 2013 to October 31, 2013 (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 third 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.
11. On April 28, 2015, Respondent requested a telephone hearing, which was subsequently granted.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 or CDC provider 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.

To be eligible, a person must be a Michigan resident. BEM 220 (March 2013), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (November 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

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.

First, the Department presented an e-mail from Respondent's prior apartment complex manager dated December 29, 2014. See Exhibit 1, p. 52. The e-mail stated that Respondent gave notice to move out during October 2012, she moved out November 2012, and she gave a Georgia forwarding address. See Exhibit 1, p. 52.

Second, the Department presented Respondent's application dated November 2, 2012, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 12-48. Moreover, this application occurred after Respondent allegedly notified the apartment complex that she would move out in October 2012. See Exhibit 1, p. 52. In the application, the Department argued that Respondent applied for State Emergency Relief (SER) funds to help move/relocate. See Exhibit 1, pp. 4 and 12. The Department argued that Respondent did not answer the question if she intended to reside in Michigan nor did she put any additional comments reporting to DHHS that her intent was to move to Georgia. See Exhibit 1, pp. 4, 16, and 26. Also, the Department presented Respondent's case comments in which the DHHS caseworker stated on November 2, 2012, Respondent reports that she is not being evicted from her apartment, but that she is not going to renew her lease. See Exhibit 1, p. 51. Furthermore, the DHHS caseworker noted that Respondent withdrew her request for SER assistance after being told she did not qualify. See Exhibit 1, p. 51.

Third, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 49-50. The FAP transaction history showed that from December 19, 2012 to

November 22, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Georgia. See Exhibit 1, pp. 49-50.

Fourth, the Department presented Respondent's LexisNexis report, which provided a Georgia residence. See Exhibit 1, pp. 53-55.

At the hearing, Respondent argued that she did not intentionally commit an IPV of her FAP benefits and there was no dispute that she used her Electronic Benefit Transfer (EBT) card in Georgia. In November of 2012, Respondent and witness 1 indicated they received notices that their leases would not be renewed (apartment located in Michigan). In fact, Respondent provided as an exhibit a Notice to Quit to Recover Possession of Property from the State of Michigan 63rd District Court dated October 19, 2012. See Exhibit A, p. 1. The notice informed Respondent that her landlord is seeking to recover possession of her property pursuant to her lease expiration on November 30, 2012 and she must move by this date or her landlord may take her to court to evict her. See Exhibit A, p. 1. It should be noted that it appeared Respondent/witness 1 used the words eviction/not renewing the lease interchangeably and Respondent ultimately meant that she had to leave her apartment complex. Nevertheless, Respondent testified that she went to Georgia to temporarily stay with her mother. Respondent testified, though, several times that she intends to go back to Michigan; however, her and her mother's medical conditions prolonged her stay out-of-state. As a matter of fact, Respondent provided a letter, which indicated that Respondent's mother has been hospitalized since April 8, 2015. See Exhibit A, p. 2. Moreover, a review of Respondent's application dated November 2, 2012, does show that Respondent reported being disabled as of February 19, 2009. See Exhibit 1, p. 18. It should be noted that Respondent testified that she never contacted the Department regarding her stay in Georgia.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. Even though the Respondent had exclusive out-of-state usage for almost one-year, Respondent provided credible testimony that she is only temporarily staying out-of-state due to her and her mother's medical conditions. This Administrative Law Judge (ALJ) finds Respondent's testimony credible that she never intended to be a Georgia resident and that she intended/intends to return to Michigan. Witness 1 provided credible testimony to support Respondent's claim that they both received notices to leave their apartment complex. Witness 1 testimony is important to note because it supports the Respondent's claim that the notice resulted in her leaving the State of Michigan. Because Respondent provided credible testimony and evidence as to the events that led her to move to Georgia, this ALJ also finds her argument that she never intended to be a Georgia resident and wishes to return to Michigan credible as well. Department policy does not prohibit out-of-state usage when the individual intends on coming back. Respondent demonstrated that she is a resident of Michigan during the alleged fraud period and only purchased food items in Georgia because her and her mother's medical conditions prolonged her stay out-of-state. See BEM 220, p. 1. The Department failed

to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility and therefore, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not disqualified from FAP benefits for 12 months. BAM 720, p. 16.

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 amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In this case, the Department has failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of \$786 for the period of March 1, 2013 to October 31, 2013. See Exhibit 1, p. 4. As stated in the previous analysis, Department policy does not prohibit out-of-state usage when the individual intends on coming back. Respondent demonstrated that she was a Michigan residence during the alleged fraud/OI period. Therefore, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits and there is no OI present in this case.

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:

