

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

**IN THE MATTER OF:**

████████████████████  
██  
██

Reg. No.: 14-001696  
Issue No(s): 3005  
Case No.: ██████████  
Hearing Date: JUNE 26, 2014  
County: Monroe

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**HEARING DECISION FOR CONCURRENT BENEFITS**  
**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 Regulations, 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 June 26, 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 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 April 29, 2014 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, committing 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 the Assistance Application signed by Respondent on June 10, 2010, Respondent reported that he intended to remain in Michigan.
5. Respondent was aware that he was required to report changes in address and that receiving dual assistance was not permitted.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to understand this requirement.
7. The OIG indicates that the fraud period is October 1, 2011 to May 31, 2013.
8. The OIG alleges that Respondent was not eligible for FAP benefits issued by the Department between October 1, 2011 and July 9, 2012 because he was not a Michigan resident during this time.
9. The OIG alleges that Respondent was not eligible for FAP benefits issued by the Department between July 10, 2012 and May 31, 2013 because he was also receiving food assistance benefits issued by the State of Tennessee during this time.
10. The Department alleges that during the fraud period, Respondent was issued \$1560 in FAP benefits and was eligible for \$0.
11. The Department alleges a FAP OI totaling \$1560.
12. This was Respondent's first alleged IPV.
13. 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), pp. 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 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 received FAP benefits from the State of Michigan at the same time he received food assistance benefits from the State of Tennessee. A person cannot receive FAP in more than one state for any month. BEM 222 (June 2011), p. 2.

In support of its case, the Department presented (i) an assistance application Respondent signed on June 10, 2010 and submitted to the Department; (ii) a benefits summary inquiry showing that Respondent received FAP benefits issued by the Department from July 1, 2012 to May 31, 2013; and (iii) a letter on State of Tennessee Department of Human Services letterhead indicating that Respondent, identified by his social security number, had an active food assistance case in the State of Tennessee from July 10, 2012 to July 31, 2013.

The foregoing evidence was sufficient to establish that Respondent received concurrent benefits from the State of Tennessee and from Michigan between July 10, 2012 and May 31, 2013. In the absence of any contrary evidence, this evidence was sufficient to establish, by clear and convincing evidence, that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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. 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, because the Department established that Respondent committed an IPV of the FAP program by receiving food assistance benefits from two states during the same period, Respondent is subject to a ten-year disqualification from 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 amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

A person cannot receive FAP in more than one state for any month. BEM 222, p. 2. Furthermore, an individual who is not a Michigan resident is ineligible for FAP benefits issued by the State of Michigan. BEM 220 (April 2011 and March 2013), p. 1; As discussed above, the evidence established that concurrent food assistance benefits from the States of Michigan and Tennessee were issued to Respondent between July 10, 2012 and May 31, 2013. The Department's evidence also established that Respondent used FAP benefits issued by the State of Michigan almost exclusively in Tennessee beginning September 11, 2011. Respondent's out-of-state use for this prolonged period of time was sufficient to establish that he was no longer a Michigan resident. See also BEM 212 (October 2011 and November 2012), pp. 2-3.

The Department alleges that, based on his lack of Michigan residency and his receipt of food assistance from the State of Tennessee, Respondent was not eligible for FAP benefits between October 1, 2011 to May 31, 2013 and presented evidence showing that \$1560 in FAP benefits were issued to Respondent during this period. However, the first month of an OI period must take into consideration the client's 10-day reporting period, the 10-day processing period and the 12-day negative action period. Based on out-of-state use that began September 11, 2011, the OI period began November 1, 2011. Removal of the \$65 in FAP benefits issued to Respondent in October 2011 reduces the OI amount to \$1495.

Thus, the Department is entitled to recoup and/or collect from Respondent \$1495 in FAP benefits it issued to Respondent between November 1, 2011 and May 31, 2013.

### **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, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV by receiving dual assistance of program benefits.

2. Respondent **did** receive an OI of program benefits in the amount of \$1495 from the FAP program.

The Department is ORDERED to reduce the OI amount to \$1495 for the period November 2011 to May 2013 and initiate recoupment and/or collection procedures for that amount in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

  
**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: July 14, 2014

Date Mailed: July 15, 2014

**NOTICE:** The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

ACE/tlf

cc: [REDACTED]  
[REDACTED]  
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