

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

IN THE MATTER OF:

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

Reg. No.: 14-003268
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 14, 2014
County: KALAMAZOO

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 July 14, 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
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
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
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 May 29, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in residence.
5. Respondent had 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 January 1, 2012 to February 29, 2012, and June 1, 2013 to October 31, 2013 (fraud periods).
7. During the fraud period, Respondent was issued \$1,226 in FIP FAP SDA CDC MA 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 FIP FAP SDA CDC MA benefits in the amount of \$1,226.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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.

In this case, the Department alleged that Respondent committed an IPV because he continued to receive and use FAP benefits issued by the State of Michigan while out-of-state. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing, it was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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 that Respondent committed an IPV of his FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012 and 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 (October 2011 and November 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2012 to February 29, 2012, and June 1, 2013 to October 31, 2013. It should be noted that the OIG report originally indicated that the alleged fraud/OI period was

January 1, 2012 to October 31, 2013. See Exhibit 1, p. 3. However, during the hearing, the Department did not consider March 2012 to May 2013 as part of the alleged fraud/OI period.

At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's application dated June 23, 2009, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 9-24 and see also Mid-Certification Contact Notice dated May 14, 2010, pp. 25-28.

Second, the Department presented Respondent's application dated March 9, 2012, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 29-52. It should be noted that this application was submitted between both alleged fraud periods; however, Respondent's FAP transaction history did confirm out-of-state usage in Indiana during the time the application was submitted. See Exhibit 1, p. 80. A review of the application did not indicate any residence in Indiana. See Exhibit 1, pp. 29-52.

Third, the Department presented Respondent's application dated April 17, 2013, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 53-76. It should be noted that this application was submitted between both alleged fraud periods. Moreover, Respondent's FAP transaction history did confirm one usage of FAP benefits in Michigan after his application was submitted on April 28, 2013. See Exhibit 1, p. 84. However, Respondent conducted out-of-state transactions exclusively in Indiana after April 28, 2013. See Exhibit 1, pp. 84-85. A review of the application did not indicate any residence in Indiana. See Exhibit 1, pp. 53-76.

Fourth, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 80-85. The FAP transaction history showed that from November 18, 2011 to March 17, 2012, Respondent used FAP benefits issued by the State of Michigan out-of-state in Indiana. See Exhibit 1, p. 80.

Then, the FAP transaction history showed that from March 27, 2012 to April 28, 2013, Respondent used FAP benefits issued by the State of Michigan in Michigan and out-of-state in Indiana. See Exhibit 1, pp. 81-84. It appeared that Respondent was traveling between both states during this time period. Moreover, the Department did not consider March 2012 to April 2013 as part of the alleged fraud period due to Respondent's usage in Michigan. See Exhibit 1, pp. 81-84.

Finally, the FAP transaction history showed that from April 30, 2013 to November 16, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Indiana. See Exhibit 1, pp. 84-85.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits.

First, the Department presented evidence to establish Respondent's intent during the IPV usage. The Department presented evidence that Respondent reported a Michigan residence while he was using out-of-state FAP benefits in Indiana. For example, the Department presented Respondent's application dated March 9, 2012, which reported a Michigan mailing address and an intent to remain in Michigan. See Exhibit 1, p. 30. Even though this application was submitted between both fraud periods, Respondent's FAP transaction history did confirm out-of-state usage in Indiana during the time the application was submitted. See Exhibit 1, p. 80. This shows that the Respondent intentionally withheld information concerning an out-of-state move during the fraud period.

Second, the Department presented Respondent's application dated April 17, 2013, which indicated a Michigan address and an intent to remain in Michigan. See Exhibit 1, p. 54. Moreover, Respondent's FAP transaction history did confirm one usage of FAP benefits in Michigan after his application was submitted on April 28, 2013. See Exhibit 1, p. 84. However, even though the application was submitted between the fraud periods, Respondent conducted out-of-state transactions exclusively in Indiana until November 16, 2013. See Exhibit 1, p. 84. Respondent conducted out-of-state transactions exclusively in Indiana for approximately five to six months after his application was submitted. See Exhibit 1, pp. 84-85. Respondent's application (dated April 17, 2013) in conjunction with the FAP transaction history is sufficient evidence to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits. Moreover, this presented clear and convincing evidence that Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. As such, the Department has established that Respondent committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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.

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. 16. 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits. Moreover, the FAP transaction history showed that Respondent did not reside in Michigan. Thus, he was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits.

As to the first OI period, in consideration of the out-of-state use that began on November 18, 2011, the Department determined that the OI period began on January 1, 2012. See Exhibit 1, p. 80 It is found that the Department applied the appropriate OI begin. See BAM 720, p. 7.

As to the second OI period, in consideration of the out-of-state use that began on April 30, 2013, the Department determined that the OI period began on June 1, 2013. See Exhibit 1, p. 84 It is found that the Department applied the appropriate OI begin. See BAM 720, p. 7.

Additionally, 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 establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from January 2012 to February 2012, which totaled \$226. See Exhibit 1, p. 77. Also, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from June 2013 to October 2013, which totaled \$1,000. See Exhibit 1, p. 78. Therefore, the Department is entitled to recoup \$1,226 (\$226 for first OI period plus \$1,000 for second OI period) of FAP benefits it issued to Respondent from January 1, 2012 to February 29, 2012, and June 1, 2013 to October 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, if any, concludes that:

