

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

IN THE MATTER OF:



Reg. No.: 14-003278
Issue No.: 3005
Case No.:
Hearing Date: July 17, 2014
County: LENAWEЕ

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 July 17, 2014 from Detroit, Michigan. The Department was represented by of the Office of Inspector General (OIG).

- Participants on behalf of Respondent included: the Respondent, .
- Respondent did appear at the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (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
 Family Independence Program (FIP) 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 May 29, 2014 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 FAP FIP MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on July 3, 2012, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The OIG indicates that the time period they are considering the fraud period is December 1, 2012 through November 30, 2013.
8. During the alleged fraud period, Respondent was issued [REDACTED] in FAP FIP MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Ohio.
10. This was Respondent's first second third alleged IPV.
11. 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 (July 2013), p. 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 (July 2013), p. 6; 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 presented evidence that the Respondent received FAP benefits from the State of Michigan from December 1, 2012 through November 30, 2013. Exhibit 1 pp. 60-61 and 52 -59. The Department also provided a confirming email from the State of Ohio, dated March 14, 2014, from the Business Manager from Lucas County, Ohio Department for Food Stamps, which confirmed that the Claimant received Food Assistance from Ohio from December 3, 2012 through November 30, 2013. Exhibit 1,pp.51.

At the hearing the Respondent did appear and ultimately conceded that she did receive concurrent benefits and did spend and use both benefits from the State of Ohio and State of Michigan during the periods alleged as the fraud period. Based upon this evidence and the Respondent's admission that she used and received FAP benefits from both states, the Department did prove by clear and convincing evidence an IPV for receipt of concurrent benefits. Even though the Respondent attempted to apply for FAP when she returned to Michigan in March 2013, at which point she was unaware of her open FAP case in Michigan, Respondent was advised to close her Ohio FAP case so she could use the [REDACTED] plus of accrued FAP benefits the State of Michigan had issued. Although the Respondent testified that she did close her Ohio case, the official correspondence from Ohio does not support the Respondent's testimony. In addition, the Respondent proceeded to begin using her Michigan issued FAP benefits in Michigan ongoing as well as her Ohio FAP 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 successfully established an IPV for concurrent receipt of FAP benefits, it is entitled to a finding of FAP 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 (July 2013), p. 1.

In this case, the Department established an Intentional Program Violation for the period December 1, 2012 through November 30, 2013 during which time the Respondent received FAP benefits from Michigan in the amount of [REDACTED] and was not entitled to receive these FAP benefits as Respondent was also receiving FAP benefits from the State of Ohio. The Department did establish through the FAP issuance summary the benefits which were received and thus is entitled to a finding of an overissuance for the period in question.

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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$5,179 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$5,179 in accordance with Department policy.
- It is FURTHER ORDERED that
 - Respondent be personally disqualified from participation in the FAP program for 10 years.



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

Date Signed: **7/18/2014**

Date Mailed: **7/18/2014**

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:

