

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-003296
Issue No.: 3005
Case No.: ██████████
Hearing Date: August 14, 2014
County: Delta

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 August 14, 2014 from Lansing, Michigan. The Department was represented by ██████████ of the Office of Inspector General (OIG). Respondent participated via telephone and provided testimony.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (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 May 30, 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 requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of FAP benefits issued by the Department.
4. On July 12, 2013, Respondent submitted an online Assistance Application where he indicated his intention to remain in the state of Michigan.
5. Respondent was aware of the responsibility to timely report changes in 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 alleges that Respondent began using FAP benefits outside of the State of Michigan beginning in July, 2013.
8. The OIG indicates that the time period they are considering the fraud period is July 15, 2013 through October 31, 2013.
9. During the alleged fraud period, Respondent was reportedly issued [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Missouri.
11. This was Respondent's first alleged IPV.
12. 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 (7-1-2013), p. 12.

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 (7-1-2013), 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.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (7-1-2013), p. 6. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p. 6. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 8-9.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (7-1-2013), p. 6. This includes completion of necessary forms. BAM 105, p. 6. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 6. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105, p. 6.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (7-1-2013), p. 1. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1.

A person **cannot** receive FAP in more than one state for any month. **Exception:** A resident of a shelter for battered women and children may temporarily be a member of two FAP groups; see BEM 617. BEM 222, p. 3.

Out-of-state benefit receipt or termination may be verified by one of the following:

- DHS-3782, Out-of-State Inquiry.
- Letter or document from other state.
- Collateral contact with the state.

Here, the Department's OIG alleges that Respondent committed an IPV when he failed to timely and properly report to the Department a change of address in order to receive an OI of FAP benefits. The Department's OIG further contends that Respondent was actively receiving FAP benefits in Missouri at the same time he applied for FAP in Michigan on July 12, 2013. Respondent, on the other hand, contends that he did not intend to commit an IPV, but that there was confusion between the state offices in both

Michigan and Missouri. Respondent states that he properly notified the Department on his assistance application that he had received FAP from another state. Respondent further states that a state worker from Missouri faxed a letter to his caseworker in Michigan which indicated that his FAP case in Missouri had been closed at the time he applied for FAP in Michigan.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

In this case, the record shows that Respondent notified the Department regarding his relocation to and from Missouri. The record evidence includes Respondent's July 12, 2013 Assistance Application which indicates that he claimed Michigan residence. (Exhibit 1, p. 11, 13, 15). Respondent also indicated on the application that he was not receiving "FoodShare or Food Stamps" this month. (Exhibit 1, p. 14). Respondent noted that he had received assistance in another state and that he had moved to Michigan from [REDACTED], [REDACTED] on July 10, 2013. (Exhibit 1, p. 15) He also indicated on the application that he had received assistance from Missouri which ended on May 1, 2013. (Exhibit 1, p. 15). Respondent noted that he was fired from his job at America's Car-Mart in Missouri on June 27, 2013. (Exhibit 1, p. 25).

The record contains conflicting evidence concerning whether and what dates Respondent's food assistance case may have been open in Missouri. The Department's case comments summary provide that on August 7, 2013, the Department contacted Arkansas and Missouri "Out-State inquiry numbers" and found "No open programs in either state." (Exhibit 1, p. 55). The Department then issued Respondent FAP benefits. The record also shows a February 6, 2014, fax from Missouri's Department of Social Services (DSS). (Exhibit 1, p. 57) This document appears to be in response to an email inquiry from Michigan concerning Respondent which provides that someone (Respondent is not specifically identified) received [REDACTED] per month in food assistance from Missouri between January, 2013, and October, 2013, and that the case closed in November, 2013. (Exhibit 1, p. 57).

The Department's case comments summary note that Respondent called his caseworker and stated that he moved to Missouri on October 20, 2013. (Exhibit 1, p. 55). Respondent's IG-311 Electronic Benefit Transfer (EBT) card usage history shows that he used his Michigan-issued EBT card in Missouri from September 15, 2013

through September 18, 2013 and again from October 3, 2013 through January 31, 2014. (Exhibit 1, pp. 50-52).

This Administrative Law Judge does not find clear and convincing evidence that Respondent committed an IPV. In other words, the evidence in this case is not clear and convincing that Respondent “intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility” as defined by BAM 720. Respondent’s testimony was credible and was consistent with the record evidence. The evidence of record confirms that Respondent did properly report to the Department that he had returned from Missouri in July, 2013 after he lost his job and that he called his caseworker and indicated that he had moved back to Missouri on October 20, 2013. This evidence does not show; however, that Respondent misrepresented his whereabouts to the Department at any time. It does appear as though the Department may have had difficulty tracking Respondent due to the frequency of his movements between Michigan and Missouri. It also appears as though Missouri did not provide the Department with reliable and accurate information concerning Respondent’s Missouri food assistance case. In addition, a review of the purported food stamp activity report from the state of Missouri appears suspicious because it fails to mention Respondent by name and does not provide any other information that clearly identifies Respondent as the actual FAP recipient. Without more, this Administrative Law Judge cannot find that an IPV occurred. Moreover, evidence of this nature is insufficient to sustain an IPV finding under the clear and convincing evidence standard.

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. 12.

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. 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.

Here, because the Department has not shown that Respondent was guilty of an IPV for dual receipt of assistance, Respondent shall **not** be personally disqualified from receiving FAP benefits for 10 years.

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. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4 (7-1-2013). A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete

information to the department. BAM 700, p 6 (7-1-2013). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (7-1-2013).

In this matter, the Department has shown that Respondent received an OI of FAP benefits. The OI was due to an agency error because Respondent reported to the Department that he had moved to Missouri on October 20, 2013. (See Exhibit 1, p. 55). The Department should have closed his FAP case effective November 1, 2013. The amount of the OI in FAP benefits was from November 1, 2013, through December 31, 2013, in the amount of [REDACTED].¹ According to BAM 700, the Department may recoup the [REDACTED] OI.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of [REDACTED].

The Department is ORDERED to reduce the OI to [REDACTED] for the period of November 1, 2013 through December 31, 2013, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall not be personally disqualified from participation in the FAP program for 10 years. The Department shall delete from Bridges any FAP disqualification related to the instant matter.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **8/25/2014**

Date Mailed: **8/25/2014**

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¹ See Exhibit 1, p. 53, which indicates that Respondent was issued \$632.00 in November, 2013 and \$632 in December, 2013. The Department did not include any other FAP months or amounts issued to Respondent after December, 2013.

CC:

Response	Percentage
Yes, the U.S. should take action to address climate change	95%
No, the U.S. should not take action to address climate change	5%