

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

IN THE MATTER OF:

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

Reg. No.: 14-005969
Issue No.: 3005
Case No.: ██████████
Hearing Date: October 23, 2014
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 23, 2014, from Detroit, Michigan. The Department was represented by ██████████
██████████████████ 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 July 11, 2014, 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 report changes in address and residency to the Department.
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 May 6, 2013, to May 31, 2013 (Fraud Period 1) and September 1, 2013, to December 31, 2013 (Fraud Period 2).
7. The Department alleges that Respondent was ineligible for FAP benefits during Fraud Period 1 because she received food assistance benefits from the [REDACTED] [REDACTED] at the same time she received FAP benefits from the State of Michigan.
8. During Fraud Period 1, the Department alleges Respondent was issued \$167 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits.
9. The Department alleges that Respondent was ineligible for FAP benefits during Fraud Period 2 because she lacked Michigan residency during this period.
10. During Fraud Period 2, the Department alleges Respondent was issued \$778 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits.
11. The Department alleges that Respondent received a FAP OI in the amount of \$945.
12. This was Respondent's first alleged IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was 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 requested IPV hearings prior to October 1, 2014 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 she continued to receive and use FAP benefits issued by the State of Michigan while she was no longer a Michigan resident and she received food assistance from another state while receiving benefits from Michigan. Notice of the IPV Disqualification Hearing sent to Respondent by the Michigan Administrative Hearing System (MAHS) to a [REDACTED] address identified by the Department was returned by the U.S. Postal Service as undeliverable. At the hearing, the Department testified that, at the time it filed its request for hearing with MAHS on July 11, 2014, it conducted a Lexis Nexis search to determine Respondent's most current address, and the [REDACTED] address was the most current address available for Respondent.

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. Because the Department established that it made attempts to determine Respondent's

current address, the hearing proceeded with respect to the alleged FAP IPV. Although the Department also alleged that Respondent received an overissuance of Medical Assistance (MA) benefits based on her lack of Michigan residency, the Department agreed to dismiss the allegations concerning the MA overissuance based on the returned mail. The hearing proceeded to address the FAP IPV and overissuance.

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 concerning her FAP benefits because (1) she received food assistance benefits from the [REDACTED] at the same time she received FAP benefits from the State of Michigan and (2) she intentionally misrepresented her Michigan residency in order to obtain Michigan-issued FAP benefits.

With respect to the dual food benefit assistance issue, the Department contends that Respondent received food assistance from the [REDACTED] from December 1, 2012, to May 31, 2013, and during a portion of this time, she also received FAP benefits issued by the State of Michigan. A person cannot receive FAP benefits in more than one state for any month. BEM 222 (March 2013), p. 2.

The Department may verify out-of-state benefit receipt by (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 3. In this case, the Department testified that it contacted the State of Florida requesting information regarding food assistance Respondent received from that State, identifying Respondent by name, birthdate and social security number. In response to its request, it received a computer screen shot showing that Respondent received food benefits from the [REDACTED] between July 9, 2012, and May 31, 2013. The Department also presented a benefit summary issuance showing that Respondent received FAP benefits issued by the Department between May 6, 2013, and May 31, 2013.

The Department's evidence was sufficient to establish that Respondent received FAP benefits from the State of Michigan and food assistance from the [REDACTED] for the period between May 6, 2013, and May 31, 2013. However, in order to establish an IPV, the Department must establish that the client not only committed, but also *intended* to commit, an IPV. 7 CFR 273.16(e)(6); 7 CFR 273.16(c). In support of its case that Respondent intended to commit the IPV, the Department points out that Respondent failed to indicate on her May 4, 2013, FAP application she filed with the Department that she had recently moved from [REDACTED] and she had been receiving benefits from the [REDACTED]. However, the period at issue in this case is less than one month, with Respondent receiving her last [REDACTED] issuance the same month she applied for Michigan-issued FAP benefits. Clearly, Respondent's [REDACTED] benefit case was in the process of closing at the time Respondent applied for FAP benefits in Michigan. In light of the short period of concurrent receipt of benefits, the Department has failed to establish by clear and convincing evidence that Respondent intended to commit an IPV based on concurrent receipt of benefits.

The Department also 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. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 2013), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (July 2013), p. 3.

In support of its IPV case concerning lack of residency, the Department presented (i) a transaction history that showed that from July 11, 2013, to December 8, 2013, Respondent used FAP benefits issued to her by the State of Michigan exclusively out of state and (ii) a printout from the Work Number, a Department-accessible database in which employers report clients' employment information, showing that Respondent was employed from August 26, 2013, to October 19, 2013, and provided her employer a Florida address. The Department testified that Respondent did not report her employment to the Department. Respondent should have been aware that her

employment income would affect her FAP eligibility and benefit amount. Respondent's out-of-state use of her Michigan-issued FAP benefits, coupled with her unreported out-of-state employment, were sufficient to establish by clear and convincing evidence that Respondent intentionally failed to report her change of residence and her employment for the purpose of maintaining FAP eligibility.

Therefore, the Department has established that Respondent committed an IPV concerning her FAP benefits based on lack of residency.

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. 13.

In this case, the Department did not establish that Respondent committed a FAP IPV based on concurrent receipt of benefits but did establish that Respondent committed an FAP IPV based on failure to report her lack of residency and employment. Because this is Respondent's first FAP IPV, she is subject to a 1-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 FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges a FAP OI of \$167 for Fraud Period 1 based on receipt of dual food benefit assistance and \$778 for Fraud Period 2 based on lack of Michigan residency. As discussed above, the Department established that Respondent received FAP benefits from the State of Michigan from May 6, 2013, to May 31, 2013, during which time she also received food assistance from the [REDACTED]. Because a client is not eligible for FAP benefits from two different states for the same time period, the Department is entitled to recoup the \$167 in FAP benefits issued to Respondent during this time. See BEM 222, p. 1.

The Department also alleges that Respondent was ineligible for FAP benefits for the period extending from September 1, 2013, to December 31, 2013, because she lacked Michigan residency. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220, p. 1. As discussed above, the transaction history showing that Respondent used her Michigan-issued FAP benefits exclusively out of state between July 11, 2013, and December 8, 2013, and the Work Number report showing that Respondent reported a [REDACTED] address to her employer was sufficient to establish that Respondent was no longer a Michigan resident as defined under Department policy and was ineligible for Michigan-issued FAP benefits.

Based on out-of-state use beginning July 11, 2013, the Department properly began the OI period for Fraud Period 2 in September 2013. BAM 720, p. 7. The benefit summary issuance presented by the Department showed that, from September 1, 2013, to December 31, 2013, Respondent received \$778 in FAP benefits from the Department.

Thus, the Department is entitled to recoup and/or collect \$945 from Respondent, the sum of the \$167 in overissued FAP benefits between May 6, 2013, and May 31, 2013, and \$778 in overissued FAP benefits between September 2013 and December 2013.

DECISION AND ORDER

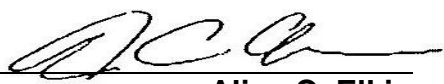
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP program benefits in the amount of \$945.

The Department is ORDERED to initiate recoupment procedures for the amount of \$945 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

The Department's request for hearing concerning the MA overissuance is DISMISSED.



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

Date Signed: **10/27/2014**

Date Mailed: **10/28/2014**

ACE / pf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]