

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

IN THE MATTER OF:

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

Reg. No.: 14-009078
Issue No.: 3005
Case No.: ██████████
Hearing Date: January 28, 2015
County: WAYNE-DISTRICT 31
(GRANDMONT)

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 January 28, 2015, 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 August 13, 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 FAP fraud period is May 1, 2011 to April 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$4,002 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 \$4,002.
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.
11. On January 23, 2015, the Michigan Administrative Hearing System (MAHS) received a signed Request for Waiver of Disqualification of Hearing by the Respondent (dated January 16, 2015). See Exhibit 2, pp. 1-3.

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 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 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, a person must be a Michigan resident. BEM 220 (April 2011 and January 2012), 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 (September 2010 and April 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 May 1, 2011 to April 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's Mid-Certification Contact Notice (mid-certification) dated March 29, 2011, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 11-12 and see also redetermination dated April 4, 2011, pp. 13-14.

Second, the Department presented Respondent's online change report dated April 30, 2013. See Exhibit 1, pp. 15-17. In the change report, Respondent reported that she was visiting her daughter in Mississippi and the effective date of change was April 15,

2013. See Exhibit 1, p. 17. It should be noted that this document was submitted at the end of the alleged fraud period.

Third, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 26-31. The FAP transaction history showed that from May 9, 2011 to July 7, 2011, Respondent used FAP benefits issued by the State of Michigan out-of-state in Mississippi. See Exhibit 1, pp. 26-27. Then, from July 16, 2011 to February 19, 2012, Respondent used FAP benefits issued by the State of Michigan in Michigan. See Exhibit 1, p. 27. Finally, from February 22, 2012 to May 31, 2013, Respondent used FAP benefits issued by the State of Michigan in Mississippi (majority) and Georgia. See Exhibit 1, pp. 27-31.

Fourth, the Department presented Respondent's LexisNexis report, which indicated a Mississippi residence. See Exhibit 1, pp. 32-39.

Fifth, the OIG report stated that Respondent and the Department spoke via telephone on June 23, 2014. See Exhibit 1, p. 3. Respondent indicated that she was visiting her daughter in Mississippi, she came back to Michigan during the alleged fraud period, and she sent a letter to DHS in April 2013 notifying of her visitation. See Exhibit 1, p. 3. However, in the report, Respondent also indicated she was in Mississippi for a long time and should have notified the Department sooner. See Exhibit 1, p. 3.

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

First, on January 23, 2015, MAHS received a signed Request for Waiver of Disqualification of Hearing by the Respondent (dated January 16, 2015). See Exhibit 2, pp. 1-3. By Respondent signing this document, she acknowledged that she would be disqualified from the FAP program. See BAM 720, pp. 2 and 15. In fact, BAM 720 states that a client is determined to have committed an IPV by signing a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement, or other recoupment and disqualification agreement form. See BAM 720, p. 2. As such, it is established that Respondent committed an IPV by her signing the Request for Waiver of Disqualification of Hearing. See Exhibit 2, pp. 1-3 and BAM 720, p. 2.

Second, the evidence is also sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits. The Department presented evidence to establish Respondent's intent during the IPV usage. The Department presented evidence that Respondent first reported that she is visiting Mississippi in the change report on April 30, 2013; however, the EBT history showed more than one-year of out-of-state-usage in Mississippi. See Exhibit 1, pp. 15-17 and 26-31. The evidence indicated that Respondent reported her alleged visit more than one year after she began using benefits out-of-state. This shows that the Respondent intentionally withheld

information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

In summary, there was clear and convincing evidence that Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

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, she was not eligible for FAP benefits and was overissued FAP benefits for any period she was ineligible to receive FAP benefits.

Applying the OI begin date policy and in consideration of the out-of-state use that began on May 9, 2011, the Department determined that the OI period began on May 1, 2011. See Exhibit 1, pp. 3 and 26. However, this is an inappropriate OI begin date. To determine the first month of the overissuance period (for overissuances 11/97 or later) the Department allows time for: the client-reporting period; the full standard of promptness (SOP) for change processing, and the full negative action suspense period. See BAM 720, p. 7. As such, it would appear the proper start date would be July 1, 2011. See BAM 720, p. 7. However, another issue arises as Respondent conducted exclusive transactions in Michigan from July 16, 2011 to February 19, 2012. See Exhibit 1, p. 27. Respondent did not conduct any transactions out-of-state during this time period. Therefore, applying the OI begin date policy and in consideration of the

out-of-state use that began on February 22, 2012, it is found that the appropriate OI begin is April 1, 2012. See BAM 720, p. 7 and Exhibit 1, pp. 27-28.

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 April 2012 to April 2013, which totaled \$2,112. See Exhibit 1, pp. 21-25. Therefore, the Department is entitled to recoup \$2,112 of FAP benefits it issued to Respondent from April 1, 2012 to April 30, 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 ☐ 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 \$2,112 from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

The Department is ORDERED to

☒ reduce the OI to \$2,112 for the period April 1, 2012 to April 30, 2013, and initiate recoupment procedures in accordance with Department policy.

☒ It is FURTHER ORDERED that Respondent be disqualified from
☐ FIP ☒ FAP ☐ SDA ☐ CDC for a period of
☒ 12 months. ☐ 24 months. ☐ lifetime.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/5/2015**

Date Mailed: **2/5/2015**

EJF / cl

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.

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