

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

IN THE MATTER OF:

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

Reg. No.: 14-011789
Issue No.: 3005
Case No.: ██████████
Hearing Date: January 28, 2015
County: WAYNE-DISTRICT 76
(GRATIOT/SEVEN M)

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 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 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 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 September 24, 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 the Assistance Application signed by Respondent on July 20, 2011, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her 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. Respondent began using FAP benefits outside of the State of Michigan beginning in September 2011.
8. The OIG indicates that the time period they are considering the fraud period is September 1, 2011 through November 30, 2012.
9. During the alleged fraud period, Respondent was issued \$3169 in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was also issued FAP benefits from the State of Iowa. The Department received written communication from the State of Iowa DHS that Respondent applied for FAP on June 23, 2011 and began receiving food assistance on September 1, 2011. Exhibit 1 p. 66- 68.
11. The Department also sought to recoup an overissuance of Medical Assistance benefits in the amount of \$165.
12. This was Respondent's first alleged IPV.
13. 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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), p. 6; BAM 720 May 2014

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. 6; BAM 720, p. May 2014.

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 has alleged that the Respondent received FAP benefits concurrently from the State of Michigan and Iowa for the period September 1, 2011 to June 30, 2012. The Department seeks to also recoup \$3,169 in Food Assistance benefits it asserts that the Respondent was overissued as Respondent was not eligible to receive benefits from Michigan and Iowa at the same time. The Department also seeks to recoup Medical Assistance premiums for the period September 1, 2011 to June 30, 2012. In this case, the Department presented verification from the State of Iowa dated September 23, 2014 in response to a prior OIG request. The documentation received from Iowa established that Claimant began receiving Food Assistance from Iowa beginning December 6, 2010 and continued uninterrupted through September 2014. Exhibit 1 pp 66-82. For the same time period the Department presented FAP Benefit Issuances Summary Inquiries which established that the Claimant was issued Michigan FAP benefits in the amount of \$367 per month for a total of \$3,169 during the same time period she received FAP from Iowa. Exhibit 1 pp. 62 and 63.

The Department also seeks an overissuance for medical premiums paid by the State of Michigan for the period beginning January 1, 2012 through June 1, 2012 which total \$165.53. Exhibit 1, p. 38. The Claimant also began receiving Medical Assistance from the State of Iowa beginning September 1, 2011 ongoing. Exhibit 1, p. 71.

BEM 222 provides: **Concurrent receipt of benefits** means assistance received from **multiple** programs to cover a person's needs for the same time period. BEM 222 (7/1/13) pp. 1. A person may not receive FAP benefits in more than one state for any month. Based upon the evidence presented it is determined that the Respondent did receive concurrent FAP benefits from both the State of Michigan and the State of Iowa and thus has established that Respondent did commit an IPV for receipt of concurrent 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 she 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), 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 established by clear and convincing evidence that the Respondent did receive FAP benefits concurrently from both Michigan and Iowa, and thus is entitled to a finding that the Respondent committed an IPV and did receive concurrently FAP benefits and is thus entitled to a finding of disqualification for a **ten year period**.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The amount of the overissuance OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, pp.8; BAM 715 (May 2014), pp. 6; BAM 705, (May 2014, pp.6.)

In this case, the Department's evidence demonstrated that the Respondent received concurrent benefits from Michigan and Iowa during the period September 1, 2011 to June 30, 2012 and is entitled to recover the full amount of FAP benefits issued to the Respondent in the amount of \$3,169 during the period based upon the FAP Benefit Issuance Summary. In addition the Department is entitled to recoup the medical assistance premiums as the Claimant received medical assistance benefits from both

Iowa and Michigan and the Claimant was no longer a resident of Michigan and thus was not entitled to receive medical assistance while a resident of Iowa. BEM 220 (7/1/14). The Department presented a schedule of premiums paid by the State of Michigan which established the medical benefit premiums paid during the period in question. Exhibit 1 p. 73-80. Thus the Department is entitled to recoup \$165.53 in Medical Assistance she was not entitled to receive.

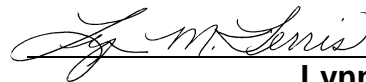
DECISION AND ORDER

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$3,169 for FAP and \$165.53 Medical Assistance.

The Department is ORDERED to initiate recoupment procedures for the amount of \$3,169 FAP and \$165.53 Medical Assistance in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for **10 years**.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/4/2015**

Date Mailed: **3/4/2015**

LMF / 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.

