

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

IN THE MATTER OF:

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Reg. No.: 14-013148
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 18, 2015
County: WAYNE-DISTRICT 15

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on June 18, 2015, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: Respondent, ██████████

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 benefits for 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 October 10, 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 residence.
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 FAP fraud periods are December 1, 2011 to July 31, 2012, and December 1, 2012 to July 31, 2013 (fraud periods).
7. During the fraud period, Respondent was issued [REDACTED] in FAP 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 FAP benefits in the amount of [REDACTED].
9. This was Respondent's first alleged IPV.
10. 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 or CDC provider 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.

To be eligible, a person must be a Michigan resident. BEM 220 (October 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 (October 2011 and November 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state.

First, the Department presented Respondent's change report received on September 25, 2012, to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 14-15. This document was submitted between the alleged fraud periods. In the change report, Respondent indicated that he had to move to a new Michigan address. See Exhibit A, p. 15. On September 25, 2012, the Department also received Respondent's Social Security benefits letter, which reported a Georgia mailing address. See Exhibit A, pp. 12-13.

Second, the Department presented Respondent's application dated September 17, 2012, which was submitted between the fraud periods and also shows that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 16-36. Respondent marked "no" to the question that asked if he had moved from, or received assistance from another state any time after August 1996. See Exhibit A, p. 17.

Third, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 42-46. The FAP transaction history showed that from November 7, 2012 to July 23, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Georgia, except in Michigan on July 20, 2013 and July 23, 2013. See Exhibit A, pp. 42-46.

Fourth, the Department presented Respondent's Georgia identification card, which indicated that it was issued on January 27, 2012. See Exhibit A, p. 41.

At the hearing, Respondent argued that at no time did he intend to be a Georgia resident. There was no dispute that Respondent used his Electronic Benefit Transfer

(EBT) card in Georgia. Respondent argued that he only visited out-of-state in order to receive better medical assistance and/or became ill and that he was a Michigan resident. Respondent testified that he obtained the Georgia identification card because that enabled him to obtain prescription drugs from Georgia. Finally, Respondent testified that he returned to Michigan in July 2013 (FAP transaction history confirms usage on July 20 and 23, 2013) and has never been back to Georgia ever since. See Exhibit A, p. 44.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. Respondent argued that he only visited out-of-state in order to receive better medical assistance/became ill and that he was a Michigan resident. The undersigned finds Respondent's testimony credible that he always intended to be a Michigan resident as the FAP transaction history supports his argument that he returned to Michigan in July 2013. See Exhibit A, p. 46. Department policy does not prohibit out-of-state usage when the individual intends on coming back. 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. Respondent has demonstrated that he was a resident of Michigan during the alleged fraud periods and only purchased food items in Georgia due to his medical necessities. BEM 220, p. 1. The Department failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. The Department has failed to establish that Respondent committed an IPV of FAP benefits.

It should be noted that the Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the FAP transaction history. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

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 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 this case, the Department has failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of ██████ for the periods of December 1, 2011 to July 31, 2012, and December 1, 2012 to July 31, 2013. See Exhibit A, p. 4.

First, the Department argued that Respondent conducted out-of-state usage for the first alleged OI period, however, the Department failed to provide any such evidence of out-of-state usage for the first alleged OI period. The Department provided a FAP transaction history, but the transactions that the Department provided began on October 11, 2012. See Exhibit A, p. 42. The date the transactions the Department provided only reflect the second alleged OI period and not the first alleged OI period (December 1, 2011 to July 31, 2012). Thus, the Department failed to satisfy its burden of showing that Respondent received an OI amount for the first alleged OI period. Nevertheless, as stated in the previous analysis, Department policy does not prohibit out-of-state usage when the individual intends on coming back. Respondent demonstrated that he was a Michigan residence during the alleged fraud/OI periods. Therefore, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits and there is no OI present in this case.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of program benefits in the amount of ██████ from the FAP benefits.

