

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

IN THE MATTER OF:

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

Reg. No.: 14-015239
Issue No.: 3005
Case No.: ██████████
Hearing Date: May 11, 2015
County: JACKSON

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a three-way telephone hearing was held on May 11, 2015, from Detroit, Michigan. The Department was represented by ██████████ of the Office of Inspector General (OIG). Participants on behalf of Respondent included Respondent, Melinda Collier.

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?

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 November 11, 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. Respondent was aware of the responsibility to report changes in residence.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the fraud period is April 1, 2013 to May 31, 2013.
7. During the alleged fraud period, Respondent was issued [REDACTED] FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued FAP benefits from the State of New Mexico.
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.
11. On or around April 23, 2015, Respondent requested a three-way telephone hearing, which was subsequently granted by this Administrative Law Judge (ALJ).

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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:

- 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 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 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (March 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. For example, Family Independence Program (FIP) from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. A person cannot receive FAP in more than one state for any month. BEM 222, p. 2. 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; or Collateral contact with the state. BEM 222, p. 3.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2012), p. 1.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to update residency information for the purpose of receiving FAP benefits from more than one state.

First, the Department presented Respondent's application dated January 24, 2013, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 10-49. In this application, Respondent reported that she has moved or received assistance from New Mexico. See Exhibit 1, p. 14. Respondent reported that she moved to Michigan on December 12, 2012 and that she received FAP assistance from New Mexico on December 20, 2012. See Exhibit 1, p. 14.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 51-52. The FAP transaction history showed that from March 30, 2013 to June 3, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in New Mexico. See Exhibit 1, pp. 51-52.

Third, the Department presented collateral contact with New Mexico to show Respondent received FAP benefits simultaneously in New Mexico. See Exhibit 1, p. 50. The documentation confirmed that Respondent received FAP benefits in New Mexico from April 2013, ongoing. See Exhibit 1, p. 50. Moreover, the Department presented Respondent's benefit summary inquiry, which showed that she received Michigan FAP benefits from February 1, 2013 to May 31, 2013. See Exhibit 1, p. 53. As such, Respondent received FAP benefits simultaneously from April 2013 to May 2013 (alleged fraud period).

At the hearing, Respondent argued that she did not intentionally defraud the Department. On or around March 30, 2013, Respondent testified that she contacted her DHHS caseworker to notify the Department that she is moving to New Mexico and

to close her benefits. Moreover, Respondent testified that she also notified a New Mexico caseworker of the same information when she applied for public assistance in New Mexico. Respondent did not dispute that she was a New Mexico resident as of April of 2013, ongoing and did not dispute that she conducted transactions using Michigan and New Mexico issued FAP benefits in New Mexico. Respondent testified, though, that she did not intentionally defraud the Department and thought that she could use the remaining balance in her Michigan issued Electronic Benefit Transfer (EBT) card because her benefits had closed.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. Respondent credibly testified that she contacted her DHHS caseworker to notify the Department that she is moving to New Mexico and to close her benefits on or around March 30, 2013. This ALJ finds Respondent's testimony credibly as she had previously reported to the Department that she received FAP assistance in New Mexico in her application dated January 24, 2013. See Exhibit 1, p. 14. This supports Respondent's credibility that she would report moving out-of-state, given that she notified the Department in her initial application. See Exhibit 1, p. 1. As such, the Department has failed to show that the Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. The Department has failed to establish that Respondent committed an IPV of FAP benefits.

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 705 (July 2014), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is agency error.

An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Health and Human Services (DHHS) or department processes. BAM 705, p. 1. Examples include available information was not used or was used incorrectly, etc...See BAM 705, p. 1.

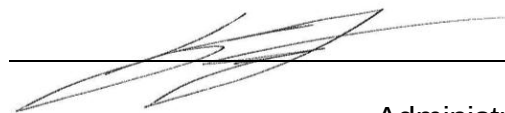
An agency error is present in this situation because the Respondent credibly testified that she reported she would be leaving the State of Michigan and to close her benefits. However, the Department failed to act on this reported information. Respondent was not eligible for Michigan FAP benefits during the time period she was receiving FAP benefits from New Mexico. See BEM 222, p. 2 (A person cannot receive FAP in more than one state for any month). Respondent was overissued Michigan FAP benefits for any period she was receiving concurrent benefits from New Mexico. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from April 1, 2013 to May 31, 2013. BAM 705, p. 6.

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 initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy.



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

Date Signed: **5/12/2015**

Date Mailed: **5/12/2015**

EJF/tm

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

CC: