

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

IN THE MATTER OF:



Reg. No.: 14-016503
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2015
County: INGHAM

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

**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 April 15, 2015, from Lansing, Michigan. The Department was represented by Regulation Agent, [REDACTED] [REDACTED] of the Office of Inspector General (OIG). The Respondent appeared and testified.

ISSUES

Did the Respondent commit an Intentional Program Violation (IPV) thereby receiving an over issuance (OI) of the Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

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 26, 2014 to establish an OI of benefits received by the Respondent as a result of the Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. The Respondent was a recipient of FAP benefits issued by the Department.
4. On the Assistance Application signed by the Respondent on June 29, 2012, the Respondent reported that she intended to stay in Michigan.

5. The Respondent was aware of the responsibility to report changes in her residence to the Department.
6. The Respondent is disabled and has fibromyalgia as well as a traumatic brain injury which could limit the understanding or ability to fulfill this requirement.
7. The Respondent began using FAP benefits outside of the State of Michigan, in Tennessee, beginning in March, 2013. The Respondent did not change her residence to Florida until January, 2014.
8. The OIG indicates that the time period they are considering the fraud period is January 1, 2014 through January 31, 2014.
9. During the alleged fraud period, the Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, the Respondent was issued FAP benefits from the State of Florida.
11. The Respondent was never issued FAP benefits from Tennessee.
12. A notice of hearing was mailed to the 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 Department's OIG requests IPV hearings for the following cases:

- FAP trafficking Ols 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 (2013), p. 10.

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 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 Respondent testified that she never intended to commit an IPV. The Respondent testified that she used her Michigan FAP benefits out-of-state in Tennessee as she was visiting folks in Tennessee and her car broke down and she was stuck there for a while. Ultimately, she returned to Michigan and then went to Florida to

visit her daughter. The Respondent testified that she decided in January 2014 to move to Florida. The Respondent testified that, because she did not want to be without food, she applied for FAP benefits in Florida at the very end of January. She was later issued [REDACTED] FAP benefits from Florida for the month of January, 2014.

The Respondent testified that she sometimes becomes confused because she suffers from a head injury. When asked about this, the Regulation Agent reviewed the Respondent's applications and confirmed that the Respondent has in the past reported that she is disabled and is suffering from a traumatic brain injury. Indeed, the Respondent testified that is how the Department always knew what her income was because she receives SSI.

The Department bears the burden of proving, by a clear and convincing standard, that the Respondent intentionally withheld information for the purpose of maintaining program benefits. In this case, the Administrative Law Judge has carefully reviewed the record and concludes that the evidence is insufficient to establish that the Respondents concurrent receipt of benefits was intentional. This is particularly so, as the Respondent did not apply for FAP benefits when she was in Tennessee so that she could receive concurrent benefits. Furthermore, if the Respondent intended to receive concurrent benefits in Florida, then surely she would have applied for those benefits upon her arrival in Florida instead of waiting for 3 to 4 months before applying for Florida's FAP benefits. Also, the evidence does not clearly establish that the Respondent is not suffering from a physical impairment which would affect her ability to fulfill her reporting responsibilities.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2011), p. 1. In this case, the Respondent testified that she did receive a nominal, perhaps [REDACTED], allotment of FAP benefits from Florida for January, 2014. As such, the Respondent was not eligible to receive FAP benefits from Michigan in January, 2014. Therefore, the Michigan, January issuance of FAP benefits constitutes the entire OI. This Administrative Law Judge concludes that the Respondent received an OI of [REDACTED] that the Department is entitled to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the evidence is insufficient to establish that the Respondent committed an IPV. No disqualification period is to be imposed. The Administrative Law Judge concludes that the Department has established that the Respondent received an OI of [REDACTED] that the Department is entitled to recoup. The Department is ordered to initiate recoupment procedures in accordance with departmental policy.

Susanne E. Harris

Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/16/2015**

Date Mailed: **4/16/2015**

SEH/sw

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]