

**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.: 14-016602
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 23, 2015
County: WAYNE-DISTRICT 18
(TAYLOR)

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), 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 April 23, 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 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 November 26, 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 period as follows: (i) December 1, 2012 to March 31, 2013; (ii) June 1, 2013 to October 31, 2013; and (iii) December 1, 2013 to December 31, 2013 (fraud periods).
7. During the fraud periods, 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 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 (January 2012; March 2013; and July 2013), 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 (November 2012 and October 2013), pp. 2-3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, pp. 2-3.

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.

First, the Department presented Respondent's application dated September 28, 2012, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 11-40.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 44-51. The FAP transaction history showed that from November 19, 2012 to March 16, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Texas. See Exhibit 1, pp. 44-47. Then, the FAP transaction history showed usage in Michigan from March 31, 2013 to April 11, 2013. See Exhibit 1, p. 47. Next, the FAP transaction history showed that from May 9, 2013 to October 23, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Texas. See Exhibit 1, pp. 47-50. Then, the FAP transaction history showed usage in Michigan on November 8, 2013 (three transactions total). See Exhibit 1, p. 50. Finally, the FAP transaction history showed that from December 7, 2013 to December 13, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Texas. See Exhibit 1, pp. 50-51.

Third, the Department presented Respondent's LexisNexis report. See Exhibit 1, pp. 52-56.

Fourth, the Department presented Respondent's verification of employment dated January 2, 2014. See Exhibit 1, pp. 57-59. The verification of employment indicated

Respondent's most recent start date was August 17, 2013. See Exhibit 1, p. 58. Also, the verification of employment reported a Texas address for Respondent and that she received wages from June 6 2013 to June 20, 2013, and August 29, 2013 to October 10, 2013. See Exhibit 1, pp. 57-59.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The Department presented evidence to establish Respondent's intent during the IPV usage. The Department presented evidence that Respondent was employed during the fraud period and the verification indicated that she had a Texas address. See Exhibit 1, pp. 57-60. Moreover, the FAP transaction history showed that Respondent used FAP benefits out-of-state in Texas during the fraud periods. See Exhibit 1, pp. 44-51. This evidence showed that Respondent no longer resided in Michigan and she intentionally withheld information concerning an out-of-state move during the fraud periods in order to maintain her 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. The Department has established 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits. 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.

As to the first OI period, applying the OI begin date policy and in consideration of the out-of-state use that began on November 19, 2012, the Department determined that the OI period began on December 1, 2012. See Exhibit 1, pp. 4 and 44. It is found that the Department applied the inappropriate OI begin date and the begin date is January 1, 2013. BAM 720, p. 7. 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 January 2013 to March 2013, which totaled [REDACTED]. See Exhibit 1, pp. 41-42. Therefore, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from January 1, 2013 to March 31, 2013.

As to the second OI period, applying the OI begin date policy and in consideration of the out-of-state use that began on May 9, 2013, the Department determined that the OI period began on June 1, 2013. See Exhibit 1, pp. 4 and 47. It is found that the Department applied the appropriate OI begin date. BAM 720, p. 7. 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 June 2013 to October 2013, which totaled [REDACTED]. See Exhibit 1, p. 42. Therefore, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from June 1, 2013 to October 31, 2013.

As to the third OI period, applying the OI begin date policy and in consideration of the out-of-state use that began on December 7, 2013, the Department determined that the OI period began on December 1, 2013. See Exhibit 1, pp. 4 and 50. It is found that the Department applied the inappropriate OI begin date and there is no OI period for December 2013. BAM 720, p. 7.

In summary, the total OI amount the Department is entitled to recoup is [REDACTED] ([REDACTED] first OI period plus [REDACTED] second OI period).

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** established by clear and convincing evidence that Respondent committed an IPV.

