

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-017845
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 8, 2015
County: WAYNE-DISTRICT 19
(INKSTER)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR 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 Regulation (CFR), 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 8, 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 Food Assistance Program (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. Respondent was a recipient of FAP benefits issued by the Department.
2. Respondent was aware of the responsibility to report changes in residence.

3. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. The Department's OIG indicates that the time period it is considering the FAP fraud period is February 1, 2011 to August 31, 2011 (fraud period).
5. 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.
6. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
7. This was Respondent's first alleged IPV.
8. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.
9. On December 9, 2013, a previous Administrative Law Judge (ALJ) issued a Hearing Decision, which found that Respondent committed an IPV resulting in a [REDACTED] OI of FAP benefits from April 1, 2011 to September 30, 2011, and a one-year disqualification. See Exhibit 1, pp. 29-33.
10. On October 29, 2014, OIG requested that the Hearing Decision be vacated because the OI period and amount were both incorrect as well as improper notice of hearing. See Exhibit 1, p. 27.
11. On November 13, 2014, the ALJ – Manager issued an Order to Vacate the Hearing Decision and Order dated December 9, 2013. See Exhibit 1, pp. 27-28.
12. On December 18, 2014, the Department's OIG filed a hearing request on, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. The OIG has requested that Respondent be disqualified from receiving program benefits.

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 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 \$500 or more, **or**
 - the total OI 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.

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 (January 2011), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if she has 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 (September 2010) 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 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 redetermination dated January 7, 2013. See Exhibit 1, pp. 10-13.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 18-12. The FAP transaction history showed that from January 26, 2011 to September 25, 2011, Respondent used FAP benefits issued by the State of Michigan out-of-state in Texas. See Exhibit 1, pp. 19-22. It should be noted that Respondent used FAP benefits in Michigan from March 9, 2012 to May 14, 2012. See Exhibit 1, p. 22.

Third, the Department presented Respondent's LexisNexis Report. See Exhibit 1, pp. 16-17.

Fourth, the Department presented Respondent's Texas driver's license, which was received by the Department in February 2012. See Exhibit 1, p. 15. The driver's license was issued on December 30, 2011. See Exhibit 1, p. 15.

Fifth, the OIG report indicated telephone contact with Respondent on December 11, 2014. See Exhibit 1, p. 3. Also, the OIG report indicated in-person contact with Respondent on December 15, 2014. See Exhibit 1, p. 3. The testifying agent indicated Respondent informed her she shared her FAP benefits with a relative (a non-group member). See Exhibit 1, pp. 1 and 3.

Based on Respondent's admission to sharing her benefits with a non-group member, the FAP transaction history, and her Texas driver's license, it is the ruling of the ALJ that an IPV is present in this case.

First, Respondent's admission to sharing her FAP benefits with a non-group member (her sister) is an appropriate consideration in determining whether an IPV occurred. See BEM 203 (January 2009), p. 2 (FAP trafficking involves fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices). Respondent's statement was given directly to the testifying agent who credibly testified concerning the statement. Respondent's statement is not hearsay because it was an admission by party opponent (Michigan Rules of Evidence 801(d)(2)); for good measure, the statement also meets a hearsay exception a statement against interest by an unavailable declarant (Michigan Rules of Evidence 804 (b)(3)). Moreover, Respondent failed to be present at the hearing to rebut the Department's testimony and evidence.

Additionally, the FAP transaction history shows that Respondent was using benefits out-of-state exclusively in Texas for approximately seven months. See Exhibit 1, pp. 19-22. In fact, subsequent to her out-of-state usage, Respondent obtained a Texas driver's license issued on December 30, 2011. See Exhibit 1, p. 15. It is reasonable to infer that Respondent was in Texas exclusively for almost one-year. This is sufficient 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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.

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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), 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 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. In consideration of the out-of-state use that began on January 26, 2011, the Department determined that the OI period began on February 1, 2011. See Exhibit 1, pp. 4 and 19. It is found that the Department applied the inappropriate OI begin and instead, the OI begin date is March 1, 2011. See BAM 720, p. 7.

Additionally, 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 establishing the OI amount, the Department presented a benefit issuance showing that Respondent was issued FAP benefits by the State of Michigan from March 1, 2011 to July 31, 2011, which totaled [REDACTED]. See Exhibit 1, p. 14. Therefore, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from March 1, 2011 to August 31, 2011. It should be noted that it appeared the August 2011 benefits were issued on July 31, 2011; therefore, the OI period included August 2011. See Exhibit 1, p. 14.

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.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the FAP program.

The Department is ORDERED to reduce the OI to [REDACTED] for the period March 1, 2011 to August 31, 2011, and initiate recoupment procedures in accordance with Department policy.


Eric Feldman
Administrative Law Judge

[illegible]