

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-14852
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: March 12, 2014
County: Kent (00)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

**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 March 12, 2014, from Detroit, Michigan. The Department was represented by [REDACTED] 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
 Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP) 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. The Department's OIG filed a hearing request on December 2, 2013 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 has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP FIP MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on November 9, 2010; March 15, 2012; and May 1, 2012, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The OIG indicates that the time period they are considering the fraud period is March 1, 2011 to March 31, 2011 and March 15, 2012 to August 31, 2012.
8. During the alleged fraud period, Respondent was issued \$4,761 in FAP FIP MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the [REDACTED].
10. This was Respondent's first second third alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was 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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 \$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 (July 2013), p. 12.

In this case, the Department alleged that Respondent committed an IPV because she received concurrent program benefits. Subsequent to the scheduling of the hearing, the Notice of Hearing was mailed to Respondent via first class mail at the address identified by the Department as the last known address. Before the scheduled hearing, the notice and hearing packet were returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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 (July 2013), p. 7; 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 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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (December 2011), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in: address and shelter cost changes that result from the move. BAM 105, p. 7.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (June 2011), 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, 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. 1. 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 2011), p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is March 1, 2011 to March 31, 2011 and March 15, 2012 to August 31, 2012. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes in residence and that she made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously.

First, the Department presented Respondent's application dated November 9, 2010, to show that her signature verifies acknowledgement and understanding of rights and responsibilities for receiving dual benefits in multiple states. See Exhibit 1. A review of Respondent's application indicated that she reported a Michigan address, she moved from [REDACTED] and received assistance from that state any time after August 1996, and that she intended to remain in Michigan. See Exhibit 1.

Second, the Department presented Respondent's application dated March 15, 2012, which occurred at the beginning of the alleged fraud period. See Exhibit 1. A review of Respondent's application indicated that she reported a Michigan address, she moved from [REDACTED] to Michigan on March 5, 2012, received assistance from that state any time after August 1996, and that she intended to remain in Michigan. See Exhibit 1.

Third, the Department presented Respondent's application dated May 1, 2012, which occurred during the alleged fraud period. See Exhibit 1. A review of Respondent's application indicated that she reported a Michigan address, she moved from [REDACTED] to Michigan on March 4, 2012, received assistance from that state any time after August 1996, and that she intended to remain in Michigan. See Exhibit 1.

Fourth, the Department presented Respondent's benefits summary inquiries to show that she received FAP benefits in March 2011 and March 15, 2012 to August 31, 2012. See Exhibit 1.

Fifth, the Department presented an out-of-state e-mail correspondence from the County Department of Human Services, [REDACTED] division. This e-mail confirmed that Respondent received duplicate FAP benefits in Mississippi in March 2011 and January 2012 to August 2012. In fact, the e-mail correspondence indicated that Respondent reapplied for FAP benefits on March 8, 2013 and received ongoing benefits from the date of the e-mail correspondence. See Exhibit 1.

Sixth, the Department presented Respondent's FAP transaction history. A review of the transaction history indicated she used her FAP benefits issued by the State of Michigan out-of-state in [REDACTED] and [REDACTED] during the alleged fraud period of January 2011 to March 2011. See Exhibit 1. However, Respondent used her FAP benefits issued by the State of Michigan in Michigan during the alleged fraud period of March 2012 to August 2012. See Exhibit 1.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. 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).

First, as to the alleged fraud period of March 2012 to August 2012, 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. A review of all of the applications indicated that the Respondent reported a Michigan address, she received assistance from that state any time after August 1996, and that she intended to remain in Michigan. See Exhibit 1. All of this information was accurate and confirmed by her FAP transaction history. A review of Respondent's FAP transaction history showed that she used her FAP benefits issued by the State of Michigan in Michigan during the alleged fraud period of March 2012 to August 2012. See Exhibit 1. It is evident that Respondent failed to report information of receiving [REDACTED] issued benefits as confirmed by the e-mails. See Exhibit 1. However, Respondent did not purposely report inaccurate information. Respondent indicated that she intended to remain in Michigan and she did throughout the alleged fraud period.

Moreover, the Department only presented e-mail correspondence that showed Respondent received FAP benefits from [REDACTED]. However, the Department did not present evidence of how much she received from [REDACTED]. Also, the Department failed to present a FAP transaction history showing Respondent using FAP benefits issued by the [REDACTED] during the alleged fraud period. The evidence merely suggests that Respondent was issued benefits from out-of-state, but nothing indicating any usage out-of-state.

Second, as to the alleged fraud period of March 2011, 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. As stated previously, the Department failed to present a FAP transaction history showing Respondent using FAP benefits issued by the State of Mississippi during the alleged fraud period.

Furthermore, the FAP transaction history does indicate she used her FAP benefits issued by the State of Michigan out-of-state in [REDACTED] during the alleged fraud

period. See Exhibit 1. Specifically, the FAP transaction history shows out-of-state transactions from January 6, 2011 to April 4, 2011. See Exhibit 1. As stated above, the e-mail correspondence showed Respondent was issued [REDACTED] as well. However, the Department failed to present any evidence of Respondent's intent during the alleged fraud period of March 2011 in order to show that she made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. The Department only showed applications before the alleged fraud period and afterwards.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

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

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 failed to satisfy 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.

First, as to the alleged fraud period of March 2012 to August 2012, the FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan in Michigan. See Exhibit 1.

The FAP transaction history indicated that Respondent did reside in Michigan because she did not conduct any transactions out-of-state during the alleged fraud period. The evidence indicated that she intended to remain in Michigan during the alleged fraud

period of March 2012 to August 2012. As such, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of program benefits in the amount of \$4,235 during the time period of March 15, 2012 to August 31, 2012.

Second, as to the alleged fraud period of March 2011, the FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan out-of-state. Specifically, the FAP transaction history showed out-of-state transactions in [REDACTED] and [REDACTED] from January 6, 2011 to April 4, 2011. See Exhibit 1. As stated previously, the Department failed to present evidence of Respondent's intent during the alleged fraud period. Therefore, an IPV was not present.

However, 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 he 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.

The Department has established that from January 6, 2011 to April 4, 2011, Respondent used FAP benefits issued by the State of Michigan out-of-state exclusively. This evidence is sufficient to establish that Respondent no longer resided in Michigan during this time period. Therefore, she was was not eligible for FAP benefits and was overissued FAP benefits for any period she was ineligible to receive FAP benefits during this time period.

Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the RS, whichever is later. BAM 720, p. 7. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 720, p. 7. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7.

Applying the above standard and in consideration of the out-of-state use that began on January 6, 2011, it is found that the appropriate OI period begin date is March 1, 2011. 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 for March 2011 in the amount of \$526. See Exhibit 1. Thus, the Department is entitled to recoup \$526 of FAP benefits it issued to Respondent for March 2011. BAM 720, p. 7.

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 established by clear and convincing evidence that Respondent did did not commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$526 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$526 in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 25, 2014

Date Mailed: March 25, 2014

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

EJF/tlf

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