

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

IN THE MATTER OF:

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

Reg. No.: 2014 1846
Issue No(s): 3005
Case No.: ██████████
Hearing Date: February 12, 2014
County: Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 12, 2014 from Detroit, Michigan. The Department was represented by ██████████ of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: ██████████ the Respondent.

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 October 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 April 9, 2012, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his 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. Respondent began using FAP FIP MA benefits outside of the State of Michigan beginning in June 11, 2012.
8. The OIG indicates that the time period they are considering the fraud period is August 1, 2012 through March 31, 2013.
9. During the alleged fraud period, Respondent was issued \$1600 in FAP FIP MA benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of \$1600.
11. This was Respondent's first second third alleged IPV.
12. 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 (), 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 700 (7/1/13), p. 6; 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 seeks a 10 year disqualification of the Respondent from receiving Food Assistance due to alleged concurrent receipt of benefits in both Michigan and Illinois. The evidence presented by the Department at the hearing failed to establish concurrent receipt of benefits by clear and convincing evidence for the following reasons. The Department presented a one page series of emails between the OIG Regulation Agent in Michigan and DHS WebBits@Illinois.gov. No individual representing the State of Illinois was identified by name and the information states with no back up copies of official records that Respondent's case opened in September 2012 and the response email from Illinois does not identify Respondent by name or social security number or address. Therefore, the Department did not establish an intentional program violation for concurrent receipt of FAP benefits.

Additionally, because the Respondent used his FAP benefits out of state and did not provide a change of address, the Department seeks to disqualify the Respondent due to receiving Michigan benefits while no longer a resident of Michigan and failure to report same. The proofs in this case indicate that at the time of the application, the Respondent was homeless and provided only a mailing address. Likewise while in Illinois Respondent also testified that he lived from place to place. Because of these circumstances and his 10th grade education, it is determined that the Respondent did not intentionally fail to report his change of address. The Respondent also did not complete any other information like a redetermination during the period which would have indicated an intent to withhold information or provide false informatin. Therefore, no IPV is established as no intent to commit fraud was established. However, it is determined that the Respondent did use his benefits out of state for a period beginning June 2012 through January 2013 and thus was no longer a resident of Michigan, having resided outside Michigan for more than 30 days.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/13), 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, because the Department failed to establish an intentional program violation based upon concurrent receipt of benefits, and intentional failure to report no longer residing in Michigan, the Department is not entitled to a finding of disqualification from receipt of FAP benefits

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (July 2013), p. 1.

In this case, the Department's evidence established that Respondent began using his Michigan FAP benefits in Illinois June 11, 2012 and stopped using Michigan FAP benefits in Illinois on January 24, 2013. Exhibit 1 pp.35-39.. The Department sought an overissuance of \$1600 but based upon the EBT history provided, the Department did not establish out-of-state use of Michigan FAP benefits after January 24, 2013 and thus is only entitled to an overissuance for October, November and December 2012 through January 2013, or 4 months, for a total of \$800.

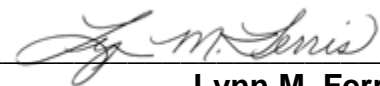
DECISION AND ORDER

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 not commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of \$800 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$800 in accordance with Department policy.
- reduce the OI to \$800 for the period October, November and December 2012 and January 2013, and initiate recoupment procedures in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 27, 2014

Date Mailed: March 27, 2014

2014-1846/LMF

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.

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]