

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25722
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 1, 2014
County: Kent

ADMINISTRATIVE LAW JUDGE: Dale Malewska

**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 1, 2014 from Lansing, 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 over-issuance (OI) of Food Assistance Program (FAP) and 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 Food Assistance Program (FAP) and Medical Assistance (MA)?

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 February 12, 2014 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 requested that the Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on October 19, 2011, Respondent reported that she/he intended to stay in Michigan. Exhibit #1, page 11.
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 and MA benefits outside of the State of Michigan beginning in November of 2011.
8. The OIG indicates that the time period they are considering the fraud period is January 1, 2012 through September 30, 2012.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP and MA benefits from the State of Michigan; \$ [REDACTED] and \$ [REDACTED] respectively.
10. During the alleged fraud period, Respondent was issued FAP and MA benefits from the State of California.
11. This was Respondent's first alleged IPV.
12. 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 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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 \$ [REDACTED] or more, or
 - the total OI amount is less than \$ [REDACTED] 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 (7-1-2013), p. 12.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (7-1-2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a Respondent who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence¹ that the Respondent 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; 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 has established that the Respondent was aware of his responsibility to timely and accurately report to the Department any and all household changes – including *residency*. Department policy requires the beneficiary to report any change in circumstance that affects eligibility or benefit amount within 10 (ten) days. See BAM 105

The Respondent's threshold signature on his application for assistance certifies that he was aware that fraudulent participation in the FAP program could result in criminal or civil or administrative claims to be brought against him. Today's record contains an Electronic Benefit Transaction (EBT) history of FAP purchases during the time period in question which demonstrated the Respondent used his Michigan-issued EBT in [REDACTED] between the dates of [REDACTED]. See Exhibit #1 at page 42.

Further proofs from the Department's witness [REDACTED] failed to establish anything beyond the OI issuance of benefits as the Department's documentary proof did not prove [by a clear and convincing standard] that anything else actually happened;

- Item 1 – was not an EBT transaction record;
- Item 2 was not an out of state verification [*this was found later by the ALJ in item 3 at page 42*];
- Item 3 was not “benefits received”;
- Item 4 was not the “application.”

To meet its burden of proof by a clear and convincing standard – the Department is required to present its proofs with *some* exacting measurement² – frankly, on review nothing is clear to this reviewer other than that the Respondent established an OI for FAP in the amount of \$ [REDACTED]

In the absence of the Respondent it would have been useful to address the full complement of possible – *but excusable absences*³ – that might have explained his migration across the nation - and to have items of documentary evidence actually

¹See also; In Re Martin, 450 Mich 204 at page 277 (1995) “We agree that the clear and convincing evidence standard, [is] the most demanding standard applied in civil cases...”

²Subject to the more exacting measurement of persuasion – clear and convincing proof. McCormick, Evidence (4th ed) §340, page 575

³See BEM 220

correspond to a retrievable page number for the reviewer to locate. It simply was not the case today and thus the Department's case fails for lack of convincing proof as well.

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent from receiving program benefits. BAM 720, p. 12. However, disqualification must be proven with clear and convincing evidence - a threshold not met today - owing to the mismatched and confused documentary record. See Exhibit #1 – throughout. Accordingly, the ALJ lacks a clear firm belief that any program violation took place.

In this case, the record demonstrates that Respondent is not guilty of an IPV.

Over-issuance

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

In this case, the record also demonstrates that the Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]

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 \$ [REDACTED] from the following program(s) FAP and MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.



Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 5/19/14
Date Mailed: 5/20/14

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.

DM/tb

cc:

