

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2014-27806
Issue No(s): 1005; 3005
Case No.: ██████████
Hearing Date: April 14, 2014
County: Washtenaw (20)

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 April 14, 2014 from Detroit, Michigan. The Department was represented by ██████████ 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 February 20, 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 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 August 11, 2011, 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. Respondent began using FAP FIP MA benefits outside of the State of Michigan beginning in March 2012.
8. The OIG indicates that the time period they are considering the fraud period for FIP benefits is May 1, 2012 to July 31, 2012.
9. The OIG indicates that the time period they are considering the fraud period for FAP benefits is May 1, 2012 to April 30, 2013.
10. During the alleged fraud period, Respondent was issued [REDACTED] FAP FIP MA benefits from the State of Michigan.
11. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Georgia.
12. This was Respondent's second alleged IPV for FAP benefits and first alleged IPV for FIP benefits.
13. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

☒ 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.

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/FIP benefits because she failed to update residency information for the purpose of receiving FAP/FIP benefits from more than one state.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (May 2012), 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.

For cash assistance benefits, a recipient of cash assistance from another state is not eligible for FIP, RAPC or SDA in Michigan for the same month. BEM 222, p. 1. For

FAP cases, a person cannot receive FAP in more than one state for any month. BEM 222, p. 2.

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.

For FAP cases, 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 his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2011), p. 1.

For FIP cases, a person is disqualified for a period of 10 years beginning with the date of conviction if convicted in court of having made a fraudulent statement or representation regarding his residence in order to receive assistance simultaneously from two or more states under any of the following programs:

- State programs funded under Title IV-A of the Social Security Act (known as Temporary Assistance for Needy Families (TANF) in the Social Security Act; known as FIP in Michigan);
- MA, FAP, or SSI.

BEM 203, p. 1.

It should be noted that the Department was also seeking that Respondent be disqualified from the FIP program for 10 years. However, this hearing cannot determine if someone is disqualified from the FIP program for 10 years. As shown above, a person is disqualified from the FIP program if *convicted in court*. BEM 203, p. 1 (emphasis added). This is an Administrative Hearing Process and therefore, it cannot determine a 10 year disqualification regarding the FIP program. However, this hearing can impose the one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV as indicated in BAM 720. See BAM 720, p. 16.

The Department's OIG indicates that the time period it is considering the alleged fraud period for FIP benefits is May 1, 2012 to July 31, 2012 and for FAP benefits, it is alleged from May 1, 2012 to April 30, 2013. 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 August 11, 2011, to show that she acknowledged her responsibility to report changes as required.

Second, the Department presented Respondent's redetermination signed May 28, 2012 and faxed to the Department on June 5, 2012, to show that she misrepresented circumstances of eligibility. See Exhibit 1. Respondent indicated in the redetermination a change of address in Michigan. See Exhibit 1.

Third, 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 exclusively in Georgia from March 22, 2012 to May 18, 2013 (during the alleged fraud period). See Exhibit 1.

Fourth, the Department presented an out-of-state e-mail correspondence from Georgia dated April 4, 2013. See Exhibit 1. This e-mail confirmed that Respondent has active FAP and TANT (cash) assistance in Georgia. See Exhibit 1. However, the e-mail failed to provide the time period of when Respondent began receiving such assistance for the programs.

Fifth, the Department presented Respondent's benefit summary inquiries to show that she received FAP benefits from May 2012 to April 2013 and FIP benefits from May 2012 to July 2012. See Exhibit 1.

Based on the foregoing information and evidence, the Department has failed to establish a basis for a ten-year disqualification period. There is persuasive evidence that Respondent made a fraudulent statement or representation regarding her residence. The fraudulent statement or representation at issue is the redetermination received via fax on June 5, 2012. See Exhibit 1. The FAP transaction history showed that Respondent had conducted EBT transactions in Georgia at the time she submitted the redetermination. Thus, this was persuasive evidence that Respondent made a fraudulent statement that she resided in Michigan (resided in Georgia instead) in order to receive multiple FAP benefits simultaneously.

However, it also has to be established that Respondent received multiple FAP benefits simultaneously (Georgia and Michigan) during the alleged fraud period. The Department presented an out-of-state e-mail correspondence from Georgia dated April 4, 2013. See Exhibit 1. This e-mail confirmed that Respondent has active FAP and TANT (cash) assistance in Georgia. See Exhibit 1. However, the e-mail failed to provide the time period of when Respondent began receiving such assistance for the programs. As such, the Department failed to establish the fraud time period in order to show Respondent received multiple FAP benefits simultaneously. Therefore, the evidence is insufficient to establish that Respondent made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

Nevertheless, the Department has established a basis for a two-year disqualification for the FAP program and a one-year disqualification for the FIP program. In this case, the

evidence was persuasive that Respondent committed an IPV of her FAP/FIP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP/FIP benefits while out of state.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012), 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 (April 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

For FIP cases, a person is a resident if all of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

BEM 220, p. 1.

For FIP cases, a temporarily absent person is considered to be living in the home when all of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP EDG before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.

BEM 210 (October 2011), p. 2.

The Department presented evidence to establish Respondent's intent during the alleged IPV usage. The Department presented evidence that Respondent reported a Michigan residence while she was using out of state FAP benefits in Georgia. The redetermination signed May 28, 2012 and faxed to the Department on June 5, 2012, indicated a new Michigan residence, which occurred during the alleged fraud period. See Exhibit 1. This shows that the Respondent intentionally withheld information concerning an out of state move during the alleged fraud period.

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/FIP eligibility. The Department has established that Respondent committed an IPV of FAP/FIP 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. At the hearing, the Department testified that the Respondent previously had her first FAP IPV in 1997. As such, Respondent is disqualified from FAP benefits for 24 months and she is also disqualified from FIP benefits for 12 months. 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.

At the hearing, the Department presented Respondent's FAP transaction history that showed that from March 22, 2012 to May 18, 2013, Respondent used FAP benefits issued by the State of Michigan out of state in Georgia. See Exhibit 1. As previously stated, the Department has established that Respondent committed an IPV of FAP/FIP benefits. Moreover, the FAP transaction history showed that Respondent did not reside in Michigan and that she was using benefits out-of-state for more than thirty days. This established that Respondent is not temporarily absent from her group. Thus, she was not eligible for FAP/FIP benefits and was overissued FAP/FIP benefits for any period she was ineligible to receive FAP/FIP benefits.

Applying the OI period begin date and in consideration of the out of state use that began on March 22, 2012, the Department determined that the OI period began for both FAP and FIP on May 1, 2012. See Exhibit 1. It is found that the Department applied the appropriate OI begin date. See BAM 720, p. 7.

In establishing the FIP OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FIP benefits by the State of Michigan from May 2012 to July 2012 totaling \$ [REDACTED]. See Exhibit 1. Thus, the Department is entitled to recoup [REDACTED] of FIP benefits it issued to Respondent between May 1, 2012 to July 31, 2012. BAM 720, pp. 7 and 8.

In establishing the FAP OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from May 2012 to April 2013 totaling [REDACTED]. See Exhibit 1. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent between May 1, 2012 to April 30, 2013. BAM 720, pp. 7 and 8. This results in a total OI amount of [REDACTED] from both the FIP and FAP programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of law, finds that Department failed to establish that Respondent committed an Intentional Program Violation (IPV) justifying a 10-year disqualification. The Department hearing request is **PARTIALLY DENIED**.

However, 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 Respondent committed an IPV justifying a one-year FIP disqualification and two-year FAP disqualification. The Department hearing request is **PARTIALLY AFFIRMED**. It is concluded 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 \$ [REDACTED] from the following program(s) FAP FIP MA.

The Department is **ORDERED** to

to initiate collection procedures for a [REDACTED] OI in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be disqualified from FIP for 12 months and also that the Respondent be disqualified from FAP for 24 months.



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

Date Signed: April 18, 2014

Date Mailed: April 18, 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/tm

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