

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

IN THE MATTER OF:



Reg. No.: 2014-29113
Issue No(s): 2005, 3005
Case No.: [REDACTED]
Hearing Date: May 27, 2014
County: Monroe

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

**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 May 27, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], 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). Respondent's daughter, [REDACTED], appeared, as did his son-in-law, [REDACTED]. [REDACTED] testified regarding her father's health, living arrangements, and facts regarding Claimant's wife, [REDACTED].

ISSUES

1. Did Respondent receive an overissuance (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 Family Independence Program Food Assistance Program (FAP) benefits?

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 March 4, 2014 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent did not sign the application; it was signed by his wife.
5. On the Assistance Application signed by Respondent's wife on May 31, 2012, Respondent reported that he intended to stay in Michigan.
6. Respondent had apparent mental impairments that would limit his understanding of this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning in April 3, 2013.
8. The Department's OIG indicates that the time period they are considering the fraud period is May 1, 2013 through January 31, 2014 (fraud period).
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP, and \$ [REDACTED] in MA benefits from the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and an OI in MA benefits in the amount of \$ [REDACTED]
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 \$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 (7/1/13), 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 (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, Claimant was using his FAP in Michigan until April 3, 2013, when he used them in Florida. (Exhibit 1 Page 70-71.) He continued to use his FAP in Florida through November 19, 2013. He received \$ [REDACTED] in FAP from April 1, 2013 through January 31, 2014. (Exhibit 1 Pages 71-72.)

During that same time period, Claimant availed himself of MA benefits, receiving \$ [REDACTED] in benefits.

Per BAM 105, p. 7 (12/1/11) Claimants are required to report their change of address within 10 days of a move. Claimant did not do that. By failing to report his correct address he received benefits that he would not have otherwise received. However, because of his mental condition as reported by his daughter, he did not seem to understand the requirement to report his change in address. Claimant's daughter testified that Claimant began living with her on November 21, 2013 when he was dropped off at her home by his wife with nothing but the clothes on his back. Beginning February 23, 2014, Claimant has been living in an assisted living facility because he is unable to live on his own.

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. 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, Claimant had no prior IPV's. Because he did not commit an IPV he is not disqualified. Inasmuch as he is living in an assisted living facility in Florida it is unlikely he will be seeking benefits in Michigan.

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, Claimant was overissued \$ [REDACTED] in FAP and \$ [REDACTED] in MA. Because the Claimant has not been proven to have committed an IPV, those benefits are not to be recouped. However, because Claimant's wife signed the application on his behalf as well as her own, the Department might wish to seek recoupment from her.

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 not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).

The Department is ORDERED to cease recoupment from the Claimant.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 28, 2014

Date Mailed: May 28, 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.

DTJ/las

cc:

