

**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 30328
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 12, 2014
County: Genesee (02)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

HEARING DECISION FOR 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 Regulation (CFR), 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 June 12, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) 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) 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 8, 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 benefits issued by the Department.
4. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to timely report changes in circumstances.
5. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2012 through March 31, 2013 (fraud period).
6. During the fraud period, Respondent was issued \$2,569.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,569.00.
8. This was Respondent's first alleged IPV.
9. 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; 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 (August 2012), 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 (December 2011), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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.

The Department alleges that Respondent committed an IPV from September 1, 2012 through March 31, 2013 when she failed to report that she had relocated to Texas. However, the evidence does not support the Department's position. In this case, Respondent did everything she was supposed to do. Respondent initially went to Texas for a visit. However, her car became inoperable and she was unable to return to Michigan. Respondent called her worker in August 2012 when she and her husband made the decision to permanently reside to Texas. In September 2012, Respondent followed up with her Michigan worker and again requested that her benefits be discontinued in Michigan. The Department discontinued Respondent's Medical Assistance (MA) benefits as of October 2012 but did not discontinue her FAP benefits.

Respondent again made several additional attempts to have her FAP benefits discontinued in Michigan, even having a representative from the Texas Health and Human Services Commission (Texas HHSC) call Respondent's Michigan worker and request that benefits be discontinued. The Department sent Respondent a Redetermination on which she reported that she resided in Texas. At that point, Respondent's Michigan worker finally discontinued her FAP benefits. Accordingly, the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits or eligibility.

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. 12.

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 (October 2009), 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. 13.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

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 Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident.

The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (January 2011), p. 5; BAM 705 (January 2011), p. 5. At the hearing, the Department established that the

State of Michigan issued a total of \$2,569.00 in FAP benefits to Respondent in from September 1, 2012 through March 31, 2013. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

The Department is seeking an overissuance in the amount of \$2,569.00. Respondent does not dispute that she received and used Michigan issued FAP benefits while residing in Texas. However, Respondent stated that the only reason she used her Michigan issued FAP benefits in Texas was because she had no other choice. Respondent testified that she is on disability, which is her only source of income. Respondent further testified that she made several attempts to have her Michigan benefits stopped but her worker would not return her calls and did not discontinue her benefits. Respondent indicated that she is currently receiving FAP benefits in Texas which suggests that she would have been eligible for FAP benefits in Texas had her worker timely discontinued her Michigan FAP benefits as repeatedly requested.


Respondent was left with little choice other than to use the Michigan issued FAP benefits in Texas because it was the only way for her to purchase food. While it is true that states bear some administrative costs, the FAP program is a federally funded program. As previously stated, the Department is only allowed to recoup benefits if the Respondent received more benefits than she was entitled. In this case, there was no evidence that Respondent was not entitled to receive benefits in Texas. As such, it is found that the Department is not allowed to recoup FAP benefits Respondent received from September 1, 2012 through March 31, 2013.

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, if any, concludes that:

1. The Department failed to establish by clear and convincing evidence that Respondent committed an IPV from September 1, 2012 through March 31, 2013.
2. Respondent did not receive an OI of FAP benefits in the amount of \$2,569.00 from September 1, 2012 through March 31, 2013.

The Department is ORDERED to delete the OI and cease any recoupment action.


JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 3, 2014

Date Mailed: July 3, 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.

JAM/cl

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