

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

**IN THE MATTER OF:**

██████████  
██████████  
██████████

Reg. No.: 2014-31969  
Issue No(s): 3005  
Case No.: ██████████  
Hearing Date: August 25, 2014  
County: Wayne (82-49)

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**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 August 25, 2014 from Detroit, Michigan. The Department was represented by ██████████  
██████████ 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 Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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 19, 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 was aware of the responsibility to report changes in address and residency to the Department.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 23, 2011, to May 31, 2012 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$1,859 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,859.
9. This was Respondent's first alleged IPV.
10. 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 (May 2014), pp. 12-13.

### **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 (May 2014), p. 7; 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.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he misrepresented his residency in his August 23, 2011 application. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (April 2011 and January 2012), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (September 2010 and April 2012), p. 2.

The Department established that, from September 13, 2011, to May 30, 2012, Respondent used FAP benefits issued to him by the State of Michigan exclusively out of state. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for Michigan-issued FAP benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

To establish its IPV case against Respondent, the Department points out that Respondent used his Michigan-issued FAP benefits twice in Michigan, both times on August 30, 2011, within a week of the date he received his initial FAP benefits, and his remaining transactions were exclusively out of state. However, Respondent identified himself as homeless in his August 23, 2011, application and there was no evidence that he was not homeless at the time of application or that he did not continue to be homeless when he used his Michigan-issued FAP benefits out of state. In order to establish that a client has committed an IPV, the Department must establish that the client “committed, and intended to commit, an IPV.” 7 CFR 273.16(e)(6); 7 CFR 273.16(c). Under the evidence presented, the Department has failed to establish by clear and convincing evidence that Respondent misrepresented his residence at the time of application for the purpose of establishing eligibility for Michigan-issued FAP benefits.

Therefore, the Department has failed to establish that Respondent committed an IPV concerning his FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed an 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 (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.

Because the Department failed to establish that Respondent committed an FAP IPV, he is not subject to a disqualification from the FAP program.

**Overissuance**

When a client group receives more benefits than 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 client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. The Department's evidence that Respondent used Michigan-issued FAP benefits out of state from September 13, 2013, to May 30, 2011, was sufficient to establish that he did not reside in Michigan during this period and was not eligible for FAP benefits issued by the Department. Based on out-of-state use that began September 13, 2011, the OI period began November 2011. BAM 720, p. 7. Respondent's EBT history shows FAP issuances to Respondent between November 2011 and May 2012 totaled \$1,400. Thus, the Department is entitled to recoup and/or collect from Respondent the \$1,400 in benefits issued to him between November 2011 and May 2012.

**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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$1,400.

The Department is ORDERED to reduce the OI to \$1,400 for the period November 2011 and May 2012, and initiate recoupment and/or collection procedures in accordance with Department policy.



**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: September 10, 2014

Date Mailed: September 10, 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.

ACE/pf

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