

**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 31990
Issue No(s): 3005
Case No.: ██████████
Hearing Date: May 19, 2014
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 19, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulatory 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 the Department establish, by clear and convincing evidence, that Respondent committed 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 February 6, 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 Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. On the Assistance Application signed by Respondent on May 19, 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 benefits outside of the State of Michigan beginning in Arizona.
8. The OIG indicates that the time period they are considering the fraud period is July 1, 2011 through August 31, 2012.
9. During the alleged fraud period, Respondent was issued \$1,884.00 in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Michigan and State of Arizona.
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 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 (January 2011), p. 4.

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 (January 2011), 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, the Department alleges that Respondent committed an IPV of her FAP benefits because she received Michigan-issued FAP benefits at the same time she used benefits issued by Arizona. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2011), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purposes other than a vacation, even if she 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 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (September 2009), p. 2.

At the hearing, the Department established that, with the exception of a few days, Respondent used her FAP benefits issued by the State of Michigan exclusively in the state of Arizona from August 22, 2011 through August 22, 2012. Additionally, the Department provided evidence that Respondent received benefits in Arizona beginning on August 11, 2011. Respondent confirmed that she was currently receiving FAP benefits in Arizona and had done so since August 2011. While this evidence may be sufficient to establish that Respondent received concurrent 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.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on May 19, 2011 in which Respondent acknowledged that she had received the Information Booklet advising her regarding Things You Must Do which explained reporting change of addresses and reporting change in residency. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits.

Respondent testified that she notified her assigned worker each time she left Michigan to reside in Arizona. Respondent further testified that her worker instructed her to use her Michigan-issued FAP benefits until she had exhausted the benefits that had been placed on her card. Respondent acknowledged that she simultaneously used both Michigan and Arizona issued FAP benefits but indicated that she was doing what she had been instructed to do by her worker. Accordingly, there was no evidence that Respondent intentionally misled the Department for the purpose of maintaining, increasing or preventing reduction of program 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. Accordingly, Respondent is not subject to a disqualification under the FAP program.

Overissuance

Department policy holds that a client cannot receive FAP benefits in more than one state for any month. BEM 222 (June 2011), p. 2. Further, 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.

In this case, the Department is seeking to recoup benefits issued in Michigan from July 1, 2011 through August 31, 2012. The Department provided Respondent's transaction history which revealed that she received FAP benefits in the amounts of \$116.00 in July 2011; \$139.00 in August 2011; and \$136.00 from September 2011 through August 2012 for a total of \$1,884.00. Additionally, the Department presented correspondence from an Arizona Department employee which showed that Respondent received FAP benefits in Arizona from August 2011 through present. Respondent confirmed that she received concurrent FAP benefits from both Michigan and Arizona from August 2011 through August 2012.

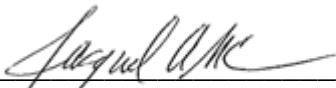
The Department failed to provide any evidence that Respondent received FAP benefits from both Michigan and Arizona in July 2011. Further, although the Department suspected that Respondent did not reside in Michigan in July 2011, there was no evidence to support this contention. Specifically, Respondent applied for Michigan issued FAP benefits on May 19, 2011. Respondent did not use her Michigan issued FAP benefits until July 2011 when she made purchases in Michigan. Respondent did not begin to use her Michigan issued FAP benefits in Arizona until approximately one month later on August 22, 2011. Further, Respondent was unable to recall the specific date she relocated to Arizona. Therefore, it is found that the Department is not entitled to recoupment from July 1, 2011 through July 31, 2011. The amount Respondent received in Michigan issued FAP benefits from August 1, 2011 through August 31, 2012 was \$1,771.00. Thus, the Department is entitled to recoup \$1,771.00 in FAP benefits it issued to Respondent from August 1, 2012 through August 31, 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, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$1,771.00 from the FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,771.00 in accordance with Department policy.


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

Date Signed: June 11, 2014

Date Mailed: June 11, 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]
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