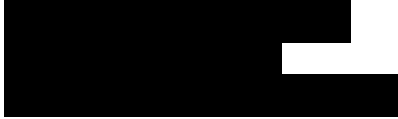


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2014-32224
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: May 12, 2014
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 12, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included:

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 the Department establish, by clear and convincing evidence, that Respondent committed 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 January 22, 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 September 29, 2010, 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. The OIG indicates that the time period they are considering the fraud period is December 1, 2011 to September 30, 2012.
8. During the alleged fraud period, the Department alleges that Respondent was issued \$3002 in FAP FIP MA benefits from the State of Michigan.
9. This was Respondent's first second third alleged IPV.
10. 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 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 (July 2013), 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 (July 2013), 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 alleged that Respondent received FAP benefits from the State of Michigan between December 1, 2011 and September 30, 2012, and received food assistance benefits from the State of Mississippi during the same period. A person cannot receive FAP in more than one state for any month. BEM 222 (June 2011), p 2.

The Department presented an application Respondent submitted to the Department on September 29, 2010, prior to the alleged fraud period. While this application is sufficient to establish that Respondent was advised of her responsibility to report changes in household circumstances, it does not establish by clear and convincing evidence that Respondent committed an IPV. (Exhibit 1, pp.8-22).

In support of its case, the Department presented email communications from an employee of the Mississippi Department of Human Services which indicate that in December 2011, Respondent applied for benefits in Mississippi, however, the type of benefit was not clearly identified. (Exhibit 1, pp .23-26). Further, a review of the evidence relied on by the Department reveals that the period for which Respondent received FAP benefits in Mississippi was also not identified. Although the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan during the period at issue, the Department failed to provide any evidence of similar caliber, that Respondent was issued food benefits in the State of Mississippi during the same period. (Exhibit 1, pp.27-28).

At the hearing, the Department established that from December 17, 2010, through August 22, 2011, Respondent used FAP benefits issued by the State of Michigan exclusively out of state, in Mississippi, however, the transaction history ends in August 2011 and evidence of Respondent's purchases during the alleged fraud period was not presented. (Exhibit 1, pp.29-32).

Based on the foregoing, the Department did not present sufficient evidence to establish that Respondent received FAP benefits from the State of Mississippi between December 1, 2011, and September 30, 2012, when she was receiving FAP benefits from the State of Michigan. Therefore, in the absence of any clear and convincing evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits on the basis of concurrent receipt of FAP benefits.

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. 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 (May 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 failed to establish that Respondent committed an IPV of her FAP benefits. Therefore, Respondent is not subject to a disqualification.

Overissuance

The Department has alleged an OI of FAP benefits resulting from Respondent's concurrent receipt of benefits. 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 alleges that Respondent was ineligible to receive the \$3002 in FAP benefits issued to her between December 1, 2011, and September 30, 2012, because she was receiving food assistance benefits from the State of Mississippi. However, as discussed above, the Department has failed to establish that Respondent received food benefits from the State of Mississippi from December 1, 2011, and September 30, 2012. Because the Department has failed to establish that Respondent was ineligible for the FAP benefits at issue, the Department has failed to establish an OI.

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. Respondent did did not commit an IPV of FAP FIP MA by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$3002 from the following program(s) FAP FIP MA.

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



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 22, 2014

Date Mailed: May 22, 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.

ZB/tlf

cc:

