

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-32897
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: June 30, 2014
County: Calhoun County (21)

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 30, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulatory 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).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (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 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 31, 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. On August 8, 2008, April 20, 2009 and August 8, 2011, Respondent completed an application for FAP benefits which advised her of her responsibility to report changes in household circumstances, such as a change in residence.
5. Respondent had no 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 December 1, 2011 through April 30, 2012, and August 1, 2012 through March 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$7,656.00 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.
8. During the fraud period, Respondent was issued \$3,869.80 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$7,656.00.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$3,869.80.
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 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 (December 2011), 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.

FAP

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. 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 purpose 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 (October 2011), p. 2.

At the hearing, the Department established that from October 1, 2011 through April 16, 2012 and from June 29, 2012 through March 13, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively in the state of Tennessee. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for 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.

In support of its contention that Respondent committed an IPV, the Department presented applications Respondent submitted to the Department on August 8, 2008, April 20, 2009, August 8, 2011 and a Redetermination on June 29, 2012, each of which Respondent acknowledged that she had received the Information Booklet explaining that she was required to report changes in residency. The transaction history reveals that on the same date Respondent signed the Redetermination requesting Michigan issued FAP benefits, she completed a purchase in Tennessee and continued to do so until March 13, 2013. Accordingly, it is found that Respondent intentionally misrepresented information for the purpose of maintaining her FAP benefits to which she was not entitled.

MA

In MA cases, an IPV exists when the client is either found guilty of fraud by a court; signs a Repay and Disqualification Agreement **and** the prosecutor or OIG designee, authorizes recoupment in lieu of prosecution; or is found responsible for the IPV by an administrative law judge conducting an IPV or debt establishment hearing. BAM 720 (December 2011), p. 2. The Department provided evidence that Respondent received

MA benefits between December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013. As previously stated Respondent's FAP purchase history together with testimony revealed that during the same time periods, Respondent was a permanent resident of Tennessee, failed to notify the Department of her change in residency and used Michigan issued MA benefits while residing out of state. Accordingly, the undersigned ALJ hereby finds that Respondent committed an IPV as it relates to MA benefits received from December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013.

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. 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is 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.

FAP

The Department established that during the fraud periods, Respondent did not reside in Michigan. The Department alleged that the two OI periods were from December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013. 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 (December 2011), p. 5; BAM 705 (December 2011), p. 5. At the hearing, the Department established that the State of Michigan issued a total of \$7,656.00 in FAP benefits to Respondent from December 1, 2011 through August 1, 2012 and from August 1, 2012 through March 31, 2013. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from December 1, 2011 through August 1, 2012 and from August 1, 2012 through March 31, 2013, which totaled \$7,656.00. Further, the Department established that during the aforementioned dates, Respondent did not reside in Michigan and was not therefore entitled to receive benefits. Thus, the Department is entitled to recoup \$7,656.00 of FAP benefits it issued to Respondent from February 1, 2012 through August 31, 2012.

MA

When the Department receives the amount of MA payments, it must determine the OI amount.

For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) **or** the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts **or** the amount of MA payments, whichever is less.

For an OI due to **any other** reason, the OI amount is the amount of MA payments. BAM 710, pp. 1-2.

In this case, the OI occurred due to Respondent's failure to report her change in residency. Therefore, the OI amount would be the amount of MA payments. The Department alleged that the OI periods were from December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013. At the hearing, the Department provided documentary evidence showing that Respondent received \$3,869.80 in MA benefits during the fraud period while residing in Tennessee. Thus, the Department is entitled to recoup \$3,869.80 of MA benefits it issued to Respondent from December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013.

DECISION AND ORDER

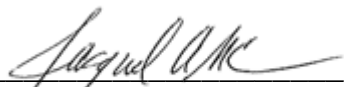
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) relating to FAP and MA benefits received from December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013.

2. The Department has established that Respondent received an OI of FAP benefits in the amount of \$7,656.00 from December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013.
3. The Department has established that Respondent received an OI of MA benefits in the amount of \$3,869.80 from December 1, 2011 through April 30, 2012 and from August 1, 2012 through March 31, 2013.

The Department is ORDERED to initiate recoupment procedures for the total amount of \$11,525.80 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



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

Date Signed: July 11, 2014

Date Mailed: July 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:

