

**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 32898
Issue No(s): 3005
Case No.: ██████████
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 ██████████ Regulation 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) 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 December 5, 2009, July 27, 2011 and February 28, 2012, Respondent completed an application for FAP benefits which advised him of his 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 May 1, 2011 through July 31, 2011, and September 1, 2012 and March 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$2,000.00 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. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,000.00.
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 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 (January 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 (January 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.

In this case, the Department alleged that the fraud period was from May 1, 2011 through July 31, 2011 and September 1, 2012 and March 31, 2013. At the hearing, the Department established that during the May 1, 2011 through July 31, 2011 fraud period, Respondent used FAP benefits issued by the State of Michigan exclusively in the state of Indiana with the exception of one Michigan purchase on June 22, 2011. Further, the Department established that during the September 1, 2012 through March 31, 2013 fraud period, Respondent used FAP benefits issued by the State of Michigan exclusively in the state of Wisconsin. 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 an application Respondent submitted to the Department on December 5, 2009, July 27, 2011 and February 8, 2012 in which Respondent acknowledged that he had received the Information Booklet advising him regarding Things You Must Do which explained reporting changes of address and reporting changes in residency. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits.

The Department provided the Respondent's transaction history which revealed that Respondent used his FAP benefits in Michigan from January 4, 2010 through February 8, 2011. Respondent then began using his Michigan issued FAP benefits from March 7, 2011 through July 14, 2011, in the state Indiana. The July 27, 2011 application for FAP benefits was submitted seven days after Respondent's last purchase in Indiana. It does not appear the Respondent used any FAP benefits following the July 27, 2011 application until he again applied for benefits on February 8, 2012. Respondent next used his FAP benefits in Michigan on February 24, 2014 and continued to do so until June 8, 2012. The transaction history further revealed that Respondent began using his Michigan issued FAP benefits in Wisconsin from July 9, 2012 through March 10, 2013.

There are any number of reasons which could have caused Respondent to leave Michigan from March 2011 through July 2011 and then again following his last usage on June 8, 2012. The Department did not provide any evidence that Respondent reapplied for Michigan issued FAP benefits while out of state or that he affirmatively communicated false information to the Department regarding his place of residence. Accordingly, the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining 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. 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

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 \$2,000.00 in FAP benefits to Respondent from May 1, 2011 through July 31, 2011 and September 1, 2012 and March 31, 2013. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

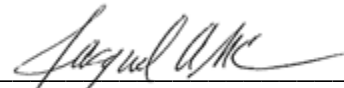
In support of its contention that Respondent was overissued FAP benefits, the Department presented Respondent's FAP transaction history showing his use of FAP benefits issued by the State of Michigan out of state beginning from March 7, 2011 through July 14, 2011 in Indiana and from July 9, 2012 through March 10, 2013. As discussed above, Respondent was no longer eligible for FAP benefits after he resided outside Michigan for more than 30 days. By May 1, 2011, it was clear that Respondent was no longer a resident of Michigan until he reapplied for benefits on July 27, 2011. Likewise, it was also clear that by September 1, 2012, Respondent again was no longer residing in Michigan. Respondent was no longer entitled to benefits after residing outside the State of Michigan for more than 30 days. See BEM 212, p 2. Therefore, the Department has established it is entitled to recoup the \$2,000.00 in FAP benefits it issued to Respondent from May 1, 2011 through July 31, 2011 and September 1, 2012 and 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 not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. The Department has established that Respondent received an OI of program benefits in the amount of \$2,000.00 from the FAP program for the period of May 1, 2011 through July 31, 2011 and September 1, 2012 and March 31, 2013.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,000.00 in accordance with Department policy.



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

Date Signed: July 14, 2014

Date Mailed: July 14, 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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