

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

IN THE MATTER OF:



Reg. No.: 2014 34082
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: June 18, 2014
County: Van Buren(80) DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 18, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], 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).

Participants on behalf of Respondent included: the Respondent Phillip Axsom.

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 April 8, 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 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 October 1, 2011 through October 31, 2012 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued [REDACTED] 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 [REDACTED].
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 failed to notify the Department that he 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 (7/1/14), 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 (7/1/14), pp. 2-3.

The Department established that from August 18, 2011, the Respondent began to use his Michigan issued FAP benefits out of state in Indiana. 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.

Fraud: In support of its IPV case against Respondent, the Department presented an application Respondent submitted to the Department on May 27, 2011 and May 15, 2012. In his application, Respondent indicated that he lived in Michigan and gave a Michigan address. On the redetermination filed May 15, 2012, the Respondent did not advise the Department about any changes in his Michigan address. Exhibit 1 pp. 11 and 15. He identified himself as a Michigan resident throughout the period in question. The Respondent credibly testified that he was in Indiana throughout the period, for the reason that he was helping his brother fix up his home. He credibly testified that during the period, he did not use his FAP assistance when in Michigan because his brother whose home he considered his Michigan residence, often prepared food for the Respondent while he was in Michigan. This brother (Michigan) advised the Department during its investigation that "Phillip (Respondent) used this address to receive mail and considers this his primary residence, however he is only at the residence 1-2 times per month to pick up his mail." The investigation notes also confirm that the Respondent has another brother who lives in Indiana. Exhibit1, pp 22. A review of Respondent's FAP transaction history is consistent with his testimony, as it establishes that Respondent made purchases in both Michigan and Indiana during the alleged fraud period.

After release from prison in 2008, the Respondent did obtain a Michigan Identification card but not a driver's license. The Respondent advised that he applied for and received an Indiana State Identification on January 15, 2013 and thereafter registered himself in the sex offender registry in Indiana due to his prior conviction as a sex offender on January 18, 2013. Both of these dates are after the period of EBT usage in Indiana, which ended in October 2012. The Respondent indicated that he became a resident of Indiana on January 2014. The Department did provide evidence that the Respondent

had a registration record as a sex offender at an earlier time, which the Respondent disputed. The Department produced a [REDACTED] document that was not a State of Indiana registration which showed a February 6, 2012 registration, which the Respondent disputed. The Respondent testified that no registration can be made in another state without an identification that you are a resident of that state.

Based on the foregoing, the Department did not present sufficient evidence to establish Respondent's intent other than Respondent's out-of-state use. Based upon these facts, the Respondent's testimony and the Department's evidence, it is determined that the Department has not satisfied the clear and convincing evidence standard necessary to demonstrate an IPV. The Department's proofs did not show that the Respondent withheld or misrepresented information concerning his residency for the purpose of establishing or continuing his Michigan FAP eligibility.

Thus, the Department has failed to establish that Respondent committed an IPV of his 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 (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.

In this case, the Department failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP program.

In this case, the Department established that Respondent committed a FAP IPV. Therefore, Respondent is subject to a one-year disqualification from 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 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 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state beginning in August

2011 with the first use August 18, 2011. The Respondent then used his FAP benefits in Michigan for much of November 2011, and then used his benefits in Indiana beginning December 14, 2011 for several months, and resumed use in Michigan again in June 2012. In August 2012, the Respondent used his benefits in Michigan on two occasions and then thereafter in Indiana until October 21, 2012, when Michigan FAP benefit issuance stopped. In this case, the Department alleges that Respondent was overissued FAP benefits in the amount of \$ [REDACTED] for the period between October 1, 2012 and February 28, 2014. Although the Department presented a FAP benefit Issuance Summary to support issuances during this period, as discussed above the Department has not established that Respondent was no longer a Michigan resident, thereby making him ineligible for FAP benefits. (Exhibit 1, p.24-26).

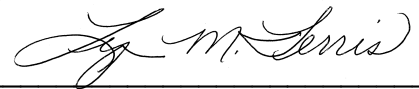
Therefore, the Department is not entitled to recoupment, as it has not been established that Respondent received more benefits than he was entitled to receive.

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 did not receive an OI of program benefits in the amount of [REDACTED] from the FAP program.

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



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 8, 2014

Date Mailed: July 8, 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.

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