

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

IN THE MATTER OF:



Reg. No.: 2014-3473
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: January 29, 2013
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 January 29, 2014 from Detroit, Michigan. The Department was represented by [REDACTED] 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)

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 October 7, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and failing to report a change in residency, and, as such, allegedly committed an IPV.
2. The OIG 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 that he no longer resided in Michigan.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent did not report that he no longer resided in Michigan.
7. Respondent continued to receive FAP benefits when he no longer resided in Michigan.
8. Respondent received an OI in FAP in the amount of [REDACTED].
9. This was Respondent's first IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 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, 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 food assistance in another state while he was receiving FAP from Michigan. The Department presented an e-mail from a personal advocate from the State of Georgia that a "Food Stamp case only active-begin date 4/17/12- next review date 3/13." (Exhibit 1, p. 25) However, the

Department did not present written proof that Respondent actually received food assistance from the State of Georgia. The Department did not present, for example, when and where Respondent used Georgia's equivalent of Michigan's EBT card. Therefore, the Department did not establish by clear and convincing evidence that Respondent received concurrent benefits.

Respondent applied for FAP on September 23, 2010. Official Notice is taken that with Respondent's signature on the assistance application, redetermination or semi-annual contact report, Respondent certified receipt, review and agreement with the sections in the assistance application Information Booklet, which include the obligation to report changes in one's circumstances. In addition, Respondent has no apparent physical or mental impairment that limits his understanding or ability to fulfill reporting responsibilities.

BEM 220 instructs that to be eligible for assistance in Michigan, a person must be a Michigan resident. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely.

BEM 220 does not give a maximum time limit that a person may leave the state and lose residency in the State of Michigan. The simple act of leaving the state—even for an extended length of time—does not remove a person's residency status for the purposes of the FAP program. It is noted that the Department cited BEM 212 regarding temporary absences, but BEM 212 addresses who must be included in FAP groups; it does not address residency.

In this case, the Department alleged that the fraud period is from September 1, 2011 through August 31, 2012. Respondent used his Michigan EBT card out of Michigan in September of 2011 and October of 2011, but then used his EBT card in Michigan in November of 2011. As noted above, the simple act of leaving the state does not remove a person's residency status.

The Department did present evidence that Respondent intended to change his residence from Michigan as of April 17, 2012: the e-mail from a personal advocate from the State of Georgia stating that a Food Stamp case was active with a begin date of April 17, 2012 (Exhibit 1, p. 25), and a Georgia Bureau of Investigation Sex Offender Registry with a Residence Verification Date of September 6, 2012. It is logical to conclude that Respondent intended to no longer use Michigan as his residence as of April 17, 2012. Respondent continued to use his Michigan EBT card outside of the State of Michigan from May of 2012 through August 31, 2012.

Based on the above discussion, it is logical to conclude that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. The Department has proven by clear and convincing evidence that Respondent committed an IPV by not reporting his change of circumstance.

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, 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 established that Respondent committed an IPV by not reporting his change of circumstances, and that this is his first IPV. Therefore, Respondent is disqualified for a period of one year from receiving FAP benefits.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, Respondent received Michigan FAP benefits when he was not residing in Michigan. BEM 220 instructs that to be eligible for assistance in Michigan, a person must be a Michigan resident. The Department has proven that Respondent received an OI of benefits when residing in another state, from May of 2012 through August of 2012. Therefore, Respondent received an OI in FAP benefits in the amount of [REDACTED]. (See Exhibit 1, p. 27, Benefit Summary Inquiry.)

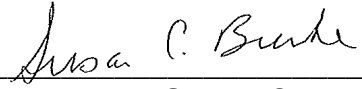
DECISION AND ORDER

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 established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. Respondent received an OI of FAP program benefits in the amount of [REDACTED].

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED], in accordance with Department policy.

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



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 10, 2014

Date Mailed: February 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.

SCB/tm

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