

**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 34784
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 12, 2014
County: Genesee (02)

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

Participants on behalf of Respondent included: Respondent.

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 April 9, 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 for 12 months
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in his residence 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 from March 1, 2012 through February 28, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$2,400.00 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 \$2,400.00.
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 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 (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 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 (January 2011), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purposes 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 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (September 2009), p. 2.

At the hearing, the Department established that from January 10, 2012 through February 23, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively in the state of Ohio with the exception of three purchases. That last Michigan purchase occurred on June 9, 2012. 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 testified that Respondent completed a Mid-Certification Contact Notice on October 3, 2012 stating that he lived in Flint, Michigan. A review of the purchase history revealed that Respondent used his Michigan issued FAP benefits in exclusively in Ohio four days after he completed the Mid-Certification Contact Notice and continued to do so until March 9, 2013. Respondent testified that he assisted the Drug Enforcement Agency with a narcotics case and that following the closure of the case he was relocated to Michigan. Respondent called a former chief of police to corroborate his claim. The former chief of police confirmed that Respondent's participation in the narcotics case resulted in convictions of several individuals and as a result he was relocated to Michigan. However, the former chief of police stated that the case was concluded approximately eight years earlier.

Respondent testified that he periodically returns to Ohio to visit his son and former wife and that he used his FAP benefits during the visits. Respondent maintained that although he visited Ohio during this time, he always resided in Michigan. Respondent's testimony is not supported by the evidence and is found not to be credible.

It is unlikely that Respondent lived in Michigan but used his benefits in Ohio exclusively for nine consecutive months and only used his benefits in Michigan only three times in a one year period. Because Respondent's testimony lacked veracity and based on the the evidence presented, it is found that the Department provided sufficient evidence to establish that Respondent intentionally withheld or misrepresented information for the purpose of establishing eligibility and/or 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 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.

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 \$2,400.00 in FAP benefits to Respondent from March 1, 2012 through February 28, 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 in January 10, 2012 and continued to do so at least until February 23, 2013. As discussed above, Respondent was no longer eligible for FAP benefits after he resided outside Michigan for more than 30 days. By March 1, 2012, it was clear that Respondent had been 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 \$2,400.00 in FAP benefits it issued to Respondent between March 1, 2012 and February 28, 2013.

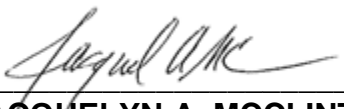
DECISION AND ORDER

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 did commit an intentional program violation (IPV).
2. The Department has established that Respondent received an OI of program benefits in the amount of \$2,400.00 from the FAP program for the period of March 1, 2012 and February 28, 2013.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,400.00 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 1, 2014

Date Mailed: July 1, 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]
[REDACTED]
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