

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

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

Reg. No.: 14-013770  
Issue No.: 3005  
Case No.: ██████████  
Hearing Date: April 13, 2015  
County: INGHAM

**ADMINISTRATIVE LAW JUDGE: Eric Feldman**

**HEARING DECISION FOR CONCURRENT BENEFITS**  
**INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and 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 April 13, 2015, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for 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 21, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 residence.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the fraud period is August 1, 2013 to November 30, 2013.
7. During the alleged fraud period, Respondent was issued [REDACTED] benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued FAP benefits from the State of Florida.
9. This was Respondent's first alleged 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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Health and Human Services Program Administrative Manuals (PAM), Department of Health and Human Services Program Eligibility Manual (PEM), and Department of Health and 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 \$500 or more, **or**
  - the total OI amount is less than \$500, **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 (October 2014), pp. 12-13.

In this case, the Department alleged that Respondent committed an IPV. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing, it was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

### **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 or CDC provider 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (July 2013), p. 1. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. A person cannot receive FAP in more than one state for any month. BEM 222, p. 3. Out-of-state benefit receipt or termination may be verified by one of the following: DHS-3782, Out-of-State Inquiry; Letter or document from other state; or Collateral contact with the state. BEM 222, p. 4.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826 or DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (July 2013), p. 1.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to update residency information for the purpose of receiving FAP benefits from more than one state.

First, the Department presented Respondent's application dated October 25, 2010, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 11-28 and see also Exhibit 1, pp. 29-32 (Respondent's redetermination dated October 30, 2012). In this application, Respondent reported that he has moved from, or received assistance from Florida any time after August 1996. See Exhibit 1, p. 12. Respondent reported that he moved to Michigan on August 1, 2009 and reported the caseworker's name. See Exhibit 1, p. 12. It should be noted, though, that Respondent's alleged fraud period began in August 2013. See Exhibit 1, p. 4.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 34-35. The FAP transaction history showed that from March 27, 2013 to December 12, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Virginia and Florida (majority). See Exhibit 1, pp. 34-35. Respondent

began using benefits in Florida from April 5, 2013 to December 12, 2013. See Exhibit 1, pp. 34-35.

Third, the Department presented out-of-state correspondence to show Respondent received FAP benefits simultaneously in Florida. See Exhibit 1, pp. 36-38. The documentation confirmed that Respondent received FAP benefits in Florida from August 27, 2013 to November 1, 2013, ongoing. See Exhibit 1, pp. 36-38. Moreover, the Department presented Respondent's benefit summary inquiry, which showed that he received Michigan FAP benefits from May 1, 2013 to November 30, 2013. See Exhibit 1, p. 33. As such, Respondent received FAP benefits simultaneously from August 2013 to November 2013 (alleged fraud period).

It should be noted that there was phone contact with Respondent in February 2014. See Exhibit 1, p. 4.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. As stated previously, the evidence indicated that Respondent received FAP benefits simultaneously (Michigan and Florida) from August 2013 to November 2013. See Exhibit 1, pp. 33 and 36-38. In fact, Respondent's FAP transaction history showed exclusive usage in Florida beginning on April 5, 2013 and ending December 12, 2013. See Exhibit 1, pp. 34-35. Respondent received FAP benefits simultaneously for approximately four months. This evidence presented that Respondent made a fraudulent statement or representation regarding his residence in order to receive multiple FAP benefits simultaneously from Michigan and Florida. See BEM 203, p. 1. Therefore, there was clear and convincing evidence that Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information for the purpose of maintaining Michigan FAP eligibility. The Department has established that Respondent committed an IPV of FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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. 16. 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 has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified for ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

### **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 group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

Applying the OI standard and in consideration of Respondent receiving out-of-state usage on August 27, 2013, it is found that the OI period began on August 1, 2013. See BAM 720, p. 7 and see Exhibit 1, pp. 4 and 38.

The Department presented evidence that Respondent was issued FAP benefits by the State of Michigan from August 2013 to November 2013, which totaled [REDACTED]. See Exhibit 1, p. 33. However, the Department's OIG report indicated that the OI amount was [REDACTED]. See Exhibit 1, p. 4. It appears that the Department miscalculated the OI amount. Thus, the Department is only entitled to recoup [REDACTED] of FAP benefits it issued to Respondent between August 1, 2013 to November 30, 2013. See BAM 720, pp. 7-8.

### **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 IPV.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the following FAP program.

The Department is ORDERED to reduce the OI to [REDACTED] for the period August 1, 2013 to November 30, 2013, and initiate recoupment procedures in accordance with Department policy.

