

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

IN THE MATTER OF:

██████████
██
████████████████████

Reg. No.: 14-015199
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 15, 2015
County: MACOMB-DISTRICT 36
(STERLING HTS)

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 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 April 15, 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 November 6, 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 her residence to the Department.
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 FAP fraud period is December 31, 2013 to June 30, 2014.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued FAP benefits from the State of Arizona.
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 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.

As a preliminary matter, the Department also pursued an alleged IPV against Respondent's spouse. Respondent, spouse, and their children were all members of the same household. See Exhibit 1, p. 15. The spouse's administrative disqualification hearing was also scheduled as the same day as the present hearing. However, this Administrative Law Judge (ALJ) issued a separate decision addressing the spouse's alleged IPV (see Reg. no. 14-015238).

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 her 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 her FAP benefits because she failed to update residency information for the purpose of receiving FAP benefits from more than one state.

First, the Department presented Respondent's State Emergency Relief application dated October 23, 2013, which acknowledged her obligation to report all changes in circumstances required. See Exhibit 1, pp. 11-13.

Second, the Department presented Respondent/spouse's redetermination received on January 2, 2014, which was submitted during the alleged fraud period. See Exhibit 1, pp. 14-17. It should be noted that Respondent signed the redetermination. See Exhibit 1, p. 17. In the redetermination, Respondent reported no changes in their address, even though the Department alleged that Respondent spouse used the benefits out-of-state in Arizona. However, the evidence indicated that Respondent did not begin to receive FAP benefits in Arizona until January 2014, which is a day after she signed the redetermination. See Exhibit 1, pp. 17 and 25.

Third, the Department presented Respondent's husband FAP transaction history. See Exhibit 1, pp. 18-22. The FAP transaction history showed that from November 7, 2013 to July 15, 2014, Respondent's husband used FAP benefits issued by the State of Michigan out-of-state in Arizona. See Exhibit 1, pp. 21-22.

Fourth, the Department presented out-of-state correspondence dated October 20, 2014, to show Respondent received FAP benefits simultaneously in Arizona. See Exhibit 1, pp. 23-65. In the out-of-state correspondence, the Department included an application for benefits in the Arizona completed by the Respondent on March 3, 2014. See Exhibit 1, pp. 33-52. In this application, Respondent marked "no" to the question if anyone in the household receives Nutrition Assistance benefits from any other state, even though the Department argued that Respondent/her family received FAP benefits from Michigan at the same time. See Exhibit 1, p. 34. However, Respondent indicated further in the application that she received FAP benefits from another state and it ended in November. See Exhibit 1, p. 50.

Additionally, the documentation indicated that Respondent received FAP benefits in Arizona from January 2014 to June 2014. See Exhibit 1, p. 25. Moreover, the Department presented evidence that Respondent/husband/family received Michigan FAP benefits from December 2013 to June 2014. See Exhibit 1, p. 60. Thus, the evidence indicated that the FAP benefits were received simultaneously from January 2014 to June 2014.

It should be noted that Respondent's spouse spoke with an OIG agent on September 26, 2014. See Exhibit 1, p. 4. Respondent's spouse reported that he went to Arizona to obtain medical treatment, his wife and children remained in Arizona and attended school there with no intention to return to Michigan, he left in November (2013) for Arizona, and he allowed Respondent to use the Electronic Benefit Transfer (EBT) card to purchase food. 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 Arizona) from January 2014 to June 2014. See Exhibit 1, pp. 25 and 60. Furthermore, the Department presented evidence that Respondent

made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. Even though Respondent indicated she received FAP benefits from another state, she indicated that the benefits stopped in November (2013). See Exhibit 1, p. 50. This is clearly improper as the evidence indicated Respondent continued to receive FAP benefits from Michigan until June 2014. See Exhibit 1, p. 60. In fact, Respondent's spouse and/her spent the Michigan issued FAP benefits exclusively in Arizona from November 7, 2013 to July 15, 2014. See Exhibit 1, pp. 21-22. As such, this evidence presented that Respondent made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously from Michigan and Arizona. See BEM 203, p. 1.

In summary, there was clear and convincing evidence that Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information for the purpose of maintaining Michigan FAP eligibility. Therefore, 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.

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits because she made a fraudulent statement or representation

