

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

IN THE MATTER OF:

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Reg. No.: 14-015238
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 15, 2015
County: MACOMB-DISTRICT 36
(STERLING HTS)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR 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 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 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 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 FAP fraud period is December 31, 2013 to June 30, 2014 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] 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 [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.
11. On September 26, 2014, Respondent signed an IPV Repayment agreement for the total OI amount of [REDACTED] and for the OI period of December 31, 2013 to June 30, 2014. See Exhibit 1, pp. 66-67.

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. 14-015199).

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.

To be eligible, a person must be a Michigan resident. BEM 220 (July 2013), p. 1. For FAP cases, 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, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (October 2013) p. 3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 3.

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.

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

Second, the Department presented Respondent's redetermination received on January 2, 2014, which was submitted during the alleged fraud period. See Exhibit 1, pp. 14-17. In the redetermination, Respondent reported no changes in his address, even though the Department alleged that Respondent resided and conducted transactions in Arizona. See Exhibit 1, pp. 14-17. It should be noted that Respondent's spouse signed the redetermination. See Exhibit 1, p. 17.

Third, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 18-22. The FAP transaction history showed that from November 7, 2013 to July 15,

2014, Respondent 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's spouse and children 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's spouse on March 3, 2014. See Exhibit 1, pp. 33-52. The documentation indicated that Respondent's spouse received FAP benefits simultaneously (Arizona and Michigan) from January 2014 to June 2014. See Exhibit 1, pp. 25 and 31.

It should be noted that Respondent spoke with an OIG agent on September 26, 2014. See Exhibit 1, p. 4. Respondent 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 his spouse 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. The Department presented evidence to establish Respondent's intent during the IPV usage. The Department presented Respondent's redetermination received by the Department on January 2, 2014. See Exhibit 1, pp. 14-17. In the redetermination, Respondent and/or spouse reported a Michigan address and there was no report of a change of address, even though the FAP transaction history showed out-of-state usage in Arizona. See Exhibit 1, pp. 14-22. Respondent had several statements on September 26, 2014 in which he indicated only an alleged temporary stay in Arizona and/or his spouse used his EBT card in Arizona; however, he failed to be present at the hearing to rebut the Department's testimony and evidence. See Exhibit 1, p. 4. Moreover, the FAP transaction history showed that Respondent used his FAP benefits in Arizona during the fraud period. See Exhibit 1, pp. 18-22. As such, there was clear and convincing evidence that Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move 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 subject to a disqualification under the FAP program. 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 overissuance is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

During the hearing, it was discovered that Respondent signed an IPV Repayment Agreement (DHS-4350) on September 26, 2014. See Exhibit 1, pp. 66-67. By the Respondent signing the repayment agreement, the Department can initiate recoupment of the [REDACTED] OI amount for the time period of December 31, 2013 to June 30, 2014. See BAM 715 (July 2014), p. 10. Based on this information, this ALJ will not address the OI amount further due to the discovery of the Respondent signing the repayment agreement on September 26, 2014.

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 FAP benefits.

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

