

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-015483  
Issue No.: FAP  
Case No.: [REDACTED]  
Hearing Date: April 16, 2015  
County: KENT-DISTRICT 1

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 16, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: April Fields.

**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 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 14, 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 any household changes, including changes with residence, to the Department.
5. Respondent had an apparent physical or mental impairment that would limit the understanding or ability to fulfill the FAP rules and responsibilities.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 2013 through December 2013 (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 [REDACTED] in such benefits during this time period.
8. Respondent received FAP benefits from the State of Georgia from August 2013 through December 2013.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or

- the total 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 1, 2014), pp. 12-13.

### **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 1, 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 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 Respondent was aware of the responsibilities to report any household changes, including changes with residence, to the Department. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105, March 1, 2013, p. 7. Respondent's signature on the Assistance Applications in this record certifies that she was aware of the reporting responsibilities and that fraudulent participation in benefits could result in criminal or civil or administrative claims.

The record contained an Electronic Benefit Transfer (EBT) History of FAP purchases during the time period in question which demonstrated that Respondent's Michigan-

issued EBT card was used out of state for 30 (thirty) days or more. From July 16, 2013, through December 13, 2013, all transactions occurred in Georgia.

Further, the Department confirmed that Respondent received FAP benefits from the State of Georgia from August 2013 through December 2013.

Respondent testified that she left Michigan in July 2013, but she did not receive any FAP benefits the last several months she was in Michigan. Respondent described repeated contacts with the Department during that time trying to get FAP benefits as well as Medical Assistance benefits for her son. Respondent asserted that she was told by a Department worker that she was not eligible because she did not renew her lease and rent receipts were not enough to show residency. Respondent stated that they obtained food through other sources, including churches. Respondent stated that before the FAP benefits began in Georgia, that office made sure the Michigan FAP case had closed. Respondent also explained that she has ALS and had not been able to go to a grocery store herself since 2012. Therefore, Respondent had to rely on others going to the store for her with the FAP card, such as her nurses and family members. Respondent reported that she recently looked for her Michigan FAP card and discovered it was missing. Respondent asserted that it must have been taken from the envelope it was stored in with paperwork that included her PIN number for this card. Respondent testified that she did not intend to receive benefits in both Michigan and Georgia; rather, she was not aware that Michigan was issuing her FAP benefits.

The submitted Benefit Summary Inquiry does not address whether or not Respondent received FAP benefits during the several months prior to July 2013. Rather, the Benefit Summary Inquiry was only run with a begin date of August 2013. This indicates an issuance of only \$■■■ per month initially for August and September 2013, with later supplemental payments of \$■■■ for August and September 2013, \$367 for October 2013, then \$■■■ for November and December 2013. The Benefit Summary Inquiry also indicates expungement of the \$■■■ LIHEAP payment for March 2013. Further, the EBT summary documents very few transactions from May through August 2013, with a low account balance on the card during those months. Compared to the transactions made in April 2013 and earlier, this supports that there had been a substantial cut to Respondent's FAP benefits a few months prior to her move to Georgia. Overall, it appears that there had been at least a substantial cut with Respondent's FAP benefits around May 2013, and the FAP benefits did not resume at the typical monthly allotment until September 2013. Thus, there is some support in the documentary evidence for Respondent's belief that her FAP benefits were cut off a few months prior to her move to Georgia.

Further, the Assistance Application documents that Respondent reported a disability and the worker noted Respondent receives SSI. Respondent had an apparent physical or mental impairment that limits understanding or ability to fulfill the FAP rules and responsibilities, such as not allowing someone else to use the FAP card and not giving out her PIN number. Respondent's need to rely on others to assist with activities, including grocery shopping, would increase her risk that someone would take and mis-use her FAP card.

Overall, the evidence does not establish that the Respondent intentionally committed an IPV by clear and convincing evidence.

### **Disqualification**

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (April 1, 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 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.

In this case, the evidence of record did not establish that Respondent committed a FAP IPV, therefore, she is not subject to disqualification.

### **Overissuance**

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

In this case, the evidence of record shows that during the above-mentioned fraud period Respondent received an OI of FAP benefits. As noted above, the evidence was not sufficient to establish the OI was due to an IPV. However, the evidence establishes that the OI occurred. Therefore, the Department must still attempt to recoup the OI.

Respondent was not eligible for Michigan issued FAP benefits after her move to Georgia or for FAP benefits to be issued by both states. The evidence of record shows that during the above-mentioned fraud period Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]

## **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 not 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 program.

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

It is FURTHER ORDERED that the Department delete and cease any disqualification period related to this OI.



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Colleen Lack  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **4/20/2015**

Date Mailed: **4/20/2015**

CL/hj

**NOTICE:** The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

