

**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.: 14-016785
Issue No.: 2006; 3005
Case No.: ██████████
Hearing Date: April 01, 2015
County: OAKLAND-DISTRICT 4
(NORTH SAGINAW)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

**HEARING DECISION FOR CONCURRENT BENEFITS
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 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 1, 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) and Medical Assistance Program (MA) 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 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 December 5, 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 and MA 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 June 1, 2011 to December 31, 2011.
7. The OIG indicates that the time period they are considering the alleged MA OI period is June 1, 2011 to December 31, 2011.
8. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP and MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP benefits from the State of Florida.
10. This was Respondent's first alleged IPV.
11. 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

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 (June 2011), 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, Family Independence Program (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. 2. 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. 3.

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 (e.g., DHS-826, 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 (January 2009), 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 application dated January 10, 2011, which acknowledged her obligation to report all changes in circumstances required. See Exhibit 1, pp. 11-30 In the application, Respondent indicated that she did move from or receive assistance from Florida after August 1996. See Exhibit 1, p. 12.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 31-34. The FAP transaction history showed that from April 11, 2011 to December 23, 2011, Respondent used FAP benefits issued by the State of Michigan out-of-state in Florida. See Exhibit 1, pp. 31-34.

Third, the Department presented Respondent's Lexis Nexis report, which indicated a current Florida address. See Exhibit 1, p. 37.

Fourth, the Department presented out-of-state correspondence dated February 8, 2012, to show Respondent received FAP benefits simultaneously in Florida. See Exhibit 1, pp. 38-41. The documentation indicated the Respondent received FAP benefits in Florida in October 2011 and her case is now closed. See Exhibit 1, p. 38.

Additionally, the out-of-state correspondence indicated she received benefits in Florida from December 2010 to April 2011. See Exhibit 1, pp. 38-41. Moreover, the Department presented Respondent's benefit summary inquiry to show that she received Michigan benefits from January 10, 2011 to December 31, 2011. See Exhibit 1, pp. 34-35. Thus, the evidence indicated that Respondent received FAP benefits simultaneously from January 2011 to April 2011 and October 2011. However, this Administrative Law Judge (ALJ) will only consider October 2011 as the only benefit period in which Respondent received benefits simultaneously as the Department failed to include January 2011 to April 2011 as part of the alleged fraud period. See Exhibit 1, p. 4. It should be noted that the evidence failed to indicate if FAP benefits were received simultaneously from May 2011 to September 2011.

It should also be noted that the OIG report indicated telephone contact with the Respondent on December 4, 2014. See Exhibit 1, p. 4. Respondent reported that she was in Michigan for a short period of time and the Department indicated she did not admit use of benefits in Florida and provided a copy of her Florida driver's license to the agency. See Exhibit 1, p. 4.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. The Department has failed to show that the 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 it is not part of the alleged fraud period, Respondent properly indicated in her application dated January 10, 2011, that she did move from or receive assistance from Florida. See Exhibit 1, p. 12. This would indicate that Respondent properly notified the Department of her move or assistance received from Florida.

Moreover, the Department presented out-of-state correspondence and Respondent's FAP transaction history. However, this failed to show by clear and convincing evidence that the Respondent intentionally withheld information to receive FAP benefits from

more than one state. As such, the Department has failed to establish 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 failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16

FAP 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 715 (July 2014), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (April 2011), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if she has 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 (September 2010), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

A client error is present in this situation because the Respondent failed to report a change in residency in order to continue receiving FAP benefits from Michigan. The FAP transaction history and out-of-state correspondence presented that Respondent no longer resided in Michigan and that she in fact received benefits simultaneously in October 2011. See Exhibit 1, pp. 31-34 and 38-39. Therefore, she was not eligible for FAP benefits and was overissued FAP benefits for any period she was ineligible to receive FAP benefits during this time period.

Applying the client error overissuance period, and in consideration of Respondent's out-of-state usage that began on April 11, 2011, it is found that the appropriate OI period begin date is June 1, 2011. See BAM 715, pp. 4-5 and Exhibit 1, pp. 4 and 31.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan for June 2011 to December 2011 in the amount of [REDACTED]. See Exhibit 1, p. 35. Therefore, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from June 1, 2011 to December 31, 2011. BAM 715, pp. 4-6.

MA Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (July 2013), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less.

BAM 710, p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department alleges that an OI was present in the amount of [REDACTED] for the period of June 1, 2011 to December 31, 2011. See Exhibit 1, p. 4. However, the Department failed to present any evidence that Respondent was issued [REDACTED] in MA benefits for this time period. As such, the Department failed to satisfy its burden of showing that Respondent received a MA OI in the amount of [REDACTED]

