

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001788
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 21, 2015
County: Wayne (41) Ft Wayne

ADMINISTRATIVE LAW JUDGE: Colleen Lack

**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 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on April 21, 2015, from Lansing, Michigan. The Department was represented by [REDACTED] 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 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 February 12, 2015, 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 responsibilities to cooperate with the local office in determining initial and ongoing eligibility; completely and truthfully answer all questions on forms and in interviews; and timely and accurately report to the Department all household changes, including changes with residence.
5. Respondent had an apparent physical or mental impairment that would limit the understanding or ability to fulfill these requirements.
6. Respondent began using FAP benefits outside of the State of Michigan beginning in December 22, 2013.
7. The OIG indicates that the time period they are considering the fraud period is December 16, 2013, through September 30, 2014.
8. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP benefits from the State 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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 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 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 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 record contained an Electronic Benefit Transfer (EBT) History of FAP purchases during the time period in question which demonstrated that Respondent used

the Michigan-issued EBT card out of state for 30 (thirty) days or more. From December 22, 2013, through June 21, 2014, and September 13, 2014, through October 22, 2014, all transactions occurred in [REDACTED]

Further, the Department confirmed that Respondent received FAP benefits from the State of [REDACTED] as of May 1, 2013.

The Respondent was aware of the responsibilities to cooperate with the local office in determining initial and ongoing eligibility; completely and truthfully answer all questions on forms and in interviews; and timely and accurately report to the Department all household changes that may affect eligibility. Department policy requires clients cooperate with the local office in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. Department policy also 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, October 1, 2013, pp. 6-9. 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.

However, the Assistance Applications in this record also indicate that Respondent had a disability and demonstrate that she was not able to consistently answer questions. For example, Respondent marked that she did not have a disability, reported she was not receiving disability benefits, but did report income from Supplemental Security Income (SSI) benefits, a Social Security Administration issued disability benefit.

There is no evidence showing Respondent timely and accurately reported any change in residency or the receipt of FAP benefits from another state to the Department. The evidence of record does establish concurrent receipt of benefits from Michigan and Ohio. However, Respondent had an apparent physical or mental impairment that limits understanding or ability to fulfill the reporting responsibilities. Accordingly, the Department has not established that 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 does 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 did not establish the OI was due to an IPV. However, the evidence does establish that the OI occurred. Therefore, the Department must still attempt to recoup the OI.

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, 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 FAP benefits in the amount of \$ [REDACTED]

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.



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

Date Signed: **4/22/2015**

Date Mailed: **4/22/2015**

CL/jaf

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:

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