

**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.: 14-014126
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 30, 2015
County: WAYNE-31 (GRANDMONT)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 30, 2015 from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included Aimee Lloyd, Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

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 October 22, 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 and MA benefits issued by the Department.
4. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2011 through May 31, 2012.
5. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and \$ [REDACTED] in MA benefits. The Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
6. The Department alleges that Respondent received a total OI in FAP and MA benefits in the amount of [REDACTED]
7. During the time period in question, Respondent was a resident of the State of North Carolina, and was employed during this time period.
8. This was Respondent's first alleged IPV.
9. 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 Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT). Prior to Bridges implementation, 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 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-.3011.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700, p. 1 (2014)

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 their reporting responsibilities.

BAM 700 (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.

The federal Food Stamp regulations read in part:

(c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2014), p. 12.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 15.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, with regard to the FAP program. Thus, the Department must not only prove that the Respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that Respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the Respondent intended to defraud the Department with regard to their FAP eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the Respondent was aware of the requirements to report at some point, nor is it enough to prove that the Respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the Respondent withhold critical information, but that the Respondent withheld this information with the intent to commit an IPV.

In other words, the Department must prove that the Respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has not proven that in the current case. Respondent applied for, and received, FAP benefits on March 3, 2010. The Respondent's statement of benefits shows that the benefits were used out of state beginning in April, 2011. There is no indication that Respondent applied for benefits while intending to live out of state, or while living out of state. Furthermore, Respondent testified that they reported both the change in residency, and the new job.

Even assuming that the Respondent did not report, and given the amount of time Respondent's benefits were used out of state Respondent possibly knew at some point that they should report and apply for residency in another state, it is important to remember that "possible" is an evidentiary threshold far below "clear and convincing". Clear and convincing evidence requires something more, some piece of evidence that clearly elevates Respondent's actions from a mere failure to report a location change into something clearly malicious.

This does not require evidence that proves maliciousness and intent beyond a reasonable doubt, but something more is required nonetheless. In the current case, all the Department has proven, at most, is that Respondent did not report. There is no evidence that clearly supports a finding that there was intent to commit an IPV, versus a Respondent who, for instance, simply forgot their obligation. The undersigned is not convinced that there was an intentional act to defraud and obtain food stamps to which the Respondent was not entitled. As such, the Administrative Law Judge declines to find an IPV in the current case, and furthermore, because Respondent credibly described reporting a change, finds that the error involved was agency error.

However, this does not mean that there was no overissuance; the Department has shown that Respondent was residing in another state during the time period in question and was therefore overissued FAP benefits.

BEM 220 does not give a maximum time limit that a Respondent may leave the state and lose residency in the State of Michigan for the purposes of the Food Assistance Program. The simple act of leaving the state—even for an extended length of time—does not in any way remove a Respondent’s residency status for the purposes of FAP benefits. However, BEM 220 does require a FAP recipient to be living in the state of Michigan. Because there is clear and convincing supporting evidence in the form of Respondent taking a job in the state of North Carolina, and beginning that job in April, 2011 (shortly after Respondent began using their benefits in that state), as well as the Respondent’s own admission that she took up residency in the state of North Carolina, the undersigned must rule that Respondent had changed their residency. Furthermore, Respondent’s income during the time period in question was high enough as to merit full disqualification from the FAP program. Therefore, the Administrative Law Judge must decide that the Respondent unlawfully received FAP benefits and there is an overissuance in the current case.

The Department had established, through a demonstration of the timeline in this matter, that Respondent ceased to remain a resident of the State of Michigan, when they began exclusively using their FAP benefits in another state while taking a job in that state and officially changing residency. The Department supported this evidence by submitting evidence showing that Respondent was employed in the state in question and furthermore, admitted to a change in residency. While Respondent’s FAP usage history by itself is insufficient to show a change in residency, supporting evidence showing a severing of ties with the State of Michigan can be used to establish that Respondent changed their residency during the time period indicated.

The Department has shown that Respondent was no longer a resident of the State of Michigan. The Department has shown that Respondent exclusively used their FAP benefits to purchase food in other states. This gives rise to the un-rebutted presumption that Respondent was living those other states. As such, Respondent is ineligible for FAP FAP benefits for the period of time after April 2011, because Respondent was no longer living in Michigan.

Respondent received benefits between April, 2011 and May, 2012. Respondent, no longer a resident of the State of Michigan, and with significant income, per her own testimony, was ineligible for benefits. Respondent received ██████ in FAP benefits during this period. As Respondent was ineligible for FAP benefits entirely, Respondent’s overissuance is therefore ██████ for those programs, and should be recouped forthwith.

With regards to the MA overissuance, BAM 710, pg. 2 (2013) states that the amount of the overissuance in most cases is the “amount of the MA payments”. However, BAM 710 does not define the term “MA payments”.

A plain reading of the term would suggest that the term "MA payments" means the amount the Department paid to medical providers for Respondent's MA benefits; this amount would not include the cost of administering the MA program for DHS client.

The Department, as support for their MA overissuance contention, submitted a list of the premiums paid by the Department for administering Respondent's inclusion in the MA program.

The undersigned declines to find this amount as an overissuance. After researching both state and federal law, including the Code of Federal Regulations, the undersigned can find no support allowing for the recoupment of administrative costs (such as premiums) for a client error or IPV in the MA program. BAM 710 contemplates specifically recouping differences in deductibles when the deductible amount is the result of a client error or IPV; such a recoupment would be recouping specific payments for treatment and care under the MA program. There is no mention of administrative costs in policy, or state or federal law, and as such, the undersigned cannot find that a request to recoup such costs is lawful absent specific policy allowing it.

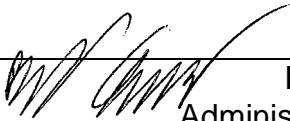
As policy does not specifically define MA payments to include administrative premium costs, the undersigned finds that the Department improperly requested recoupment of such costs.

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. Respondent did not commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] in FAP benefits, as a result of an AGENCY ERROR.

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



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/5/2015**

Date Mailed: **5/5/2015**

RJC / tm

