

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016595
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 21, 2015
County: Wayne-District 17

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 21, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of the Respondent included: Jaron Mojet.

ISSUES

Did the Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?

Should the Respondent be disqualified from the 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 26, 2014, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV.
2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2013, through December 31, 2013.

4. On an application for assistance dated May 29, 2013, the Respondent acknowledged the duty to report any change of residency to the Department.
5. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department alleges that from August 1, 2013, through December 31, 2013, the Respondent received \$ [REDACTED] of Food Assistance Program (FAP) benefits but was eligible for only \$0, and therefore received an overissuance of \$ [REDACTED]
7. This was the Respondent's first alleged IPV.
8. A notice of hearing was mailed to the 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

Department of Health and Human Services Bridges Administrative Manual (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.

Department of Health and Human Services Bridges Administrative Manual (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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 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.

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.

To be eligible for Food Assistance Program (FAP) benefits, a person must be a Michigan resident. A person is considered a resident under the Food Assistance Program (FAP) 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (July 1, 2014), p 1.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

On an application for assistance dated May 29, 2013, the Respondent acknowledged the duty to report any change of residency to the Department. The Department failed to offer a copy of this application for assistance or any accompanying case notes as evidence but instead offers records of when the application was completed. The Respondent was a Food Assistance Program (FAP) recipient from August 1, 2013, through December 31, 2013. The Respondent began using Food Assistance Program (FAP) benefits in Missouri on June 19, 2013, and used them exclusively in Missouri through January 5, 2014. The use of benefits in another state is evidence of a lack of intent to remain a Michigan resident.

The Respondent testified that he and his family had been evicted from their home in Michigan and moved in with family members in Missouri for what he had hoped would be a temporary basis. The Respondent testified that he informed his caseworker of his problems with housing and that this was the result of a loss of employment. The Respondent testified that he had placed his family's personal property into storage in Michigan before travelling to Missouri, which is evidence supporting a finding of intent to remain a Michigan resident. The Respondent testified that he was applying for work both in Michigan and Missouri during this period.

The exclusive use of FAP benefits outside Michigan is evidence of a lack of intent to remain a Michigan resident, but is not conclusive proof of what the recipient's intent was. The Respondent testified that he informed his caseworker that his presence in Missouri was only due to his family's unstable housing situation and not because they had no intent to return to Michigan. Evidence of communications between the Respondent, or a lack of communications with the caseworker were not made part of the hearing record.

This Administrative Law Judge finds the Claimant's testimony to be credible that his initial presence in Missouri was intended to be temporary and that his intent was to return to Michigan after regaining employment. The Claimant's credible testimony that he placed his family's personal belongings into storage in Michigan supports these claims. This Administrative Law Judge finds that the evidence supports a finding that at some point, the Respondent no longer intended to return to Michigan. This Administrative Law Judge finds that the Department has failed to establish by clear and convincing evidence of when the Respondent no longer intended to remain a Michigan resident. In this case, the Respondent's intentions cannot be determined solely from his use of benefits in Missouri. Therefore, this Administrative Law Judge finds that the Department has failed to establish by clear and convincing evidence that the Respondent intentionally failed to notify the Department of his change of residency for the purposes of receiving benefits that he was not eligible for.

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 the Respondent committed an IPV.
2. The Department is ORDERED to delete the OI and cease any recoupment action.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Health and Human Services

Date Signed: **4/28/2015**

Date Mailed: **4/28/2015**

KS/las

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:

A large black rectangular redaction box covers the names and contact information of the recipients listed under the 'cc:' field.