

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

IN THE MATTER OF:

██████████
██
██

Reg. No.: 15-005940
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 9, 2015
County: WAYNE-DISTRICT 41

ADMINISTRATIVE LAW JUDGE: Eric Feldman

**HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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 July 9, 2015, from Detroit, Michigan. The Department was represented by ██████████ 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 April 22, 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 responsibility to report changes in residence.
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 fraud period is February 5, 2014 to October 31, 2014.
7. During the alleged fraud period, Respondent was issued ██████ in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued benefits from the State of Georgia.
9. This was Respondent's first alleged IPV.
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 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (July 2013), 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, 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. 3. 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. 4.

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 (such as a DHS-826 or 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 (July 2013), 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 February 5, 2014, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 16-53. In the application, Respondent reported a Michigan address and answered "no" to the question if she is getting FoodShare or Food Stamps this month, even though the Department argued that Respondent received FAP benefits simultaneously from the State of Georgia. See Exhibit A, p. 18.

Second, the Department presented Respondent's application dated April 18, 2014, which was submitted during the alleged fraud period. See Exhibit A, pp. 54-87. In the application, Respondent reported a Michigan address, even though the Department argued that Respondent received FAP benefits simultaneously from the State of Georgia. See Exhibit A, pp. 55-56.

Third, the Department presented Respondent's LexisNexis report, which indicated a current address in Georgia. See Exhibit A, pp. 88-98.

Fourth, the Department testified that from May 17, 2014 to October 29, 2014, Respondent used FAP benefits issued by the State of Michigan out-of-state in Georgia (exclusively). See Exhibit A, p. 1 (Hearing Summary). However, the Department failed to present any documentary evidence that Respondent in fact conducted transactions in Georgia from May 17, 2014 to October 29, 2014 (i.e., FAP transaction history).

Fifth, the Department presented out-of-state correspondence (e-mail) from the State of Georgia dated April 8, 2015, to show that Respondent received benefits in Georgia. See Exhibit A, pp. 11-15. The documentation confirmed that Respondent received benefits from Georgia for the period of March 21, 2001 to April 1, 2015. See Exhibit A,

pp. 11-15. However, the documentation failed to indicate the specific type of benefits the Respondent received (i.e., FAP or Cash assistance). Thus, the undersigned was unable to determine if Respondent actually received FAP benefits simultaneously from the State of Georgia and Michigan during the alleged fraud period.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

First, it has to be established that Respondent received FAP benefits simultaneously (Georgia and Michigan) in order to disqualify the Respondent for ten years when it is involving concurrent receipt of benefits. However, as stated above, the evidence failed to establish by clear and convincing evidence that Respondent received FAP benefits simultaneously (Michigan and Georgia) during the alleged fraud period. See Exhibit A, pp. 11-15.

Nevertheless, the Department sought a one-year disqualification for the FAP program based on her out-of-state residence. The Department alleged that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state.

To be eligible, a person must be a Michigan resident. BEM 220 (February 2014), p. 1. For FAP cases, a person is considered a resident 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. BEM 220, pp. 1-2. 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 (February 2014), p. 3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 3.

The Department testified that from May 17, 2014 to October 29, 2014, Respondent used FAP benefits issued by the State of Michigan out-of-state in Georgia (exclusively). See Exhibit A, p. 1 (Hearing Summary). However, the Department failed to present any documentary evidence that Respondent in fact conducted transactions in Georgia from May 17, 2014 to October 29, 2014 (i.e., FAP transaction history). Thus, the evidence failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility during the alleged fraud period.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

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, pp. 15-16; BEM 708 (April 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 FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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 Department has not satisfied 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.

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 720, p. 8.

As stated previously, the Department failed to show that Respondent committed an IPV of her FAP benefits. 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 (July 2014), p. 1.

Nonetheless, the evidence failed to establish that Respondent did receive a FAP OI based on the Department's concurrent receipt of benefits argument or that she was no longer a Michigan resident. As such, the Department failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of [REDACTED] for the period of February 5, 2014 to October 31, 2014.

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:

