

**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.: 15-006206
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 29, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR 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 Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on June 29, 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) 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 benefits for 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 27, 2015, 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 benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residence and group composition.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the FAP fraud period is December 1, 2012 to May 31, 2014 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████.
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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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:

- Willful overpayments of \$500.00 or more under the AHH program.

- FAP trafficking overissuances 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 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.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012), 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, 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 (November 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home. See BAM 105, p. 7.

Finally, BEM 212 outlines the process in which the Department determines who must be included in the FAP group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212, p. 1. FAP group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation.

BEM 212, p. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212, p. 2.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits based on two different reasons. First, the Department alleged that Respondent failed to notify the Department that a FAP group member (her daughter) no longer resided in home because she had obtained employment out-of-state. Second, the Department alleged that Respondent failed to notify the Department that she (the Respondent) no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state.

First, the Department presented Respondent's application dated July 5, 2011, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 4-40.

Second, the Department presented employment verifications (three different employers) to show that the FAP group member (Respondent's daughter) no longer resided in home because she had obtained employment out-of-state. The first employment verification reported a Tennessee address, the group member received wages from October 25, 2013 to February 28, 2014, and she was hired on October 2, 2013. See Exhibit A, pp. 41-42. The second employment verification reported a Tennessee address, the group member received wages from March 19, 2013 to August 13, 2013, and she was hired on October 8, 2012. See Exhibit A, pp. 43-47. The third employment verification reported a Tennessee address, the group member received wages on May 2, 2014, and she was hired on April 21, 2014. See Exhibit A, pp. 48-49.

Third, the Department also presented Respondent's application dated April 1, 2013, which was submitted during the alleged fraud period. See Exhibit A, pp. 50-90. In the application, Respondent reported that the FAP group member (Respondent's daughter) lived in the home, even though the Department argued that she was employed out-of-state at the time. See Exhibit A, p. 55. Finally, the Department presented the group member's alleged social media page, which reported her residence in Tennessee. See Exhibit A, p. 91.

Fourth, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 107-111. The FAP transaction history showed that from January 11, 2014 to May 12, 2014, Respondent used FAP benefits issued by the State of Michigan out-of-state in Virginia. See Exhibit A, pp. 107-111. The Department also presented Respondent's alleged social media page, which reported her residence in Virginia. See Exhibit A, p. 114.

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

In this case, the Department presented sufficient evidence to show that Respondent's daughter no longer resided in the home during the fraud period because she had obtained employment out-of-state. See Exhibit A, pp. 41-49. Thus, the FAP group size should have been four, rather than five during the fraud period. Moreover, Respondent committed an IPV of her FAP benefits because she failed to notify the Department that her daughter no longer resided in the home. For example, on April 1, 2013, Respondent submitted an application during the fraud period in which she reported that the FAP group member (Respondent's daughter) lived in the home, even though the evidence established that the daughter was employed out-of-state at the time. See Exhibit A, pp. 47 and 55. This is persuasive evidence that Respondent committed an IPV of her FAP benefits because she intentionally withheld or misrepresented her group composition information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

Furthermore, the Department presented evidence the Respondent committed an IPV of her FAP benefits based on her failure to notify the Department that she (the Respondent) no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state. Respondent's FAP transaction history showed that Respondent used FAP benefits out-of-state in Virginia during the fraud period. See Exhibit A, pp. 107-111. This evidence showed that Respondent no longer resided in Michigan and that there was clear and convincing evidence that Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

In summary, the Department has established by clear and convincing evidence 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits.

Applying the OI begin date policy, it is found that the Department applied the appropriate OI begin date of December 1, 2012 (Respondent's daughter began employment on October 8, 2012). BAM 720, p. 7 and Exhibit A, pp. 4 and 43.

Additionally, 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.

It should be noted that the total OI amount is based on two different calculations. First, the Department presented budgets for the timeframe of December 2012 to February 2014. These budgets showed the benefits overissued to the Respondent during the period in which Respondent's daughter should have not been a group member. The undersigned finds the OI budgets to be fair and correct as it properly showed that Respondent should have received benefits based on a group size of four rather than five. The OI for the timeframe of December 2012 to February 2014 is found to be [REDACTED].

Second, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from March 2014 to May 2014, which totaled [REDACTED]. See Exhibit A, p. 115. During this timeframe, Respondent had complete FAP ineligibility due to her out-of-state residence; hence, why the Department sought to recoup the entire amount issued for these benefit months.

In total, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from December 1, 2012 to May 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, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.

