

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008837
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: August 6, 2015
County: WAYNE-DISTRICT 15

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 August 6, 2015, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent from 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 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 [REDACTED], 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. On the Assistance Application signed by Respondent on [REDACTED], Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning in May of 2011.
8. The OIG indicates that the time period they are considering the fraud period is [REDACTED].
9. During the alleged fraud period, Respondent was issued \$5,523 in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of [REDACTED].
11. This was Respondent's first alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was 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.

In this case, the Department alleged that Respondent committed an IPV of her FAP benefits. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing, it was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (May 2010 and June 2011), 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. 2. 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. 3.

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 (e.g., DHS-826, 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 (January 2009 and July 2011), 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 [REDACTED], to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 12-31. In the application, Respondent did not mark "yes" or "no" to the question if she has moved from, or received assistance from another state any time after August 1996. See Exhibit A, p. 13. However, Respondent did answer the question that she did move to Michigan on [REDACTED]. See Exhibit A, p. 13.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 32-35. The FAP transaction history showed that from [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED]. See Exhibit A, pp. 32-35.

Third, the Department presented out-of-state correspondence to argue that Respondent received FAP benefits simultaneously from [REDACTED]. See Exhibit A, pp. 36-50. The Department indicated that Respondent received FAP benefits from the State of [REDACTED] from April 2003 to September 2013 and again from June 2014 to current. See Exhibit A, p. 1. Moreover, the Department presented Respondent's benefit summary inquiry, which showed that she received Michigan FAP benefits from [REDACTED]. See Exhibit A, pp. 125-126. As such, the Department argued that Respondent received FAP benefits simultaneously during the alleged fraud period.

Fourth, the Department presented Respondent's [REDACTED] General Notice of Case Actions (case actions) dated [REDACTED] and [REDACTED]. See Exhibit A, pp. 38-45. These case actions represented Respondent's applications for FAP benefits in the State of [REDACTED]. The Department also presented evidence that Respondent resided in [REDACTED] during the alleged fraud period. See Exhibit A, pp. 52-124.

Based on the foregoing information and evidence, the Department has failed to establish a basis for a ten-year disqualification period.

First, it has to be established that Respondent received FAP benefits simultaneously in order to disqualify the Respondent for ten years when it is involving an alleged concurrent receipt of benefits. The Department indicated that Respondent received FAP benefits from the State of [REDACTED] from April 2003 to September 2013 and again from June 2014 to current. See Exhibit A, p. 1. However, the Department failed to provide documentary evidence supporting the allegation that Respondent received FAP benefits from the State of [REDACTED] during the above time period. See Exhibit A, p. 1. For example, the Department presented Respondent's case actions from the State of [REDACTED] however, these documents were only applications for FAP benefits and did not indicate if FAP benefits were actually issued. See Exhibit A, pp. 38-45. A review of the evidence record failed to provide proof of the exact time frame Respondent received FAP benefits from the State of [REDACTED] (i.e., a [REDACTED] benefit summary inquiry). Thus, the undersigned is unable to determine the time frame Respondent received FAP benefits simultaneously from the State of [REDACTED] and Michigan. As such, the evidence failed to establish by clear and convincing evidence that Respondent received FAP benefits simultaneously (Michigan and [REDACTED] during the alleged fraud period.

Nevertheless, the Department sought a one-year disqualification for the FAP program based on her out-of-state residence.

To be eligible, a person must be a Michigan resident. BEM 220 (April 2011), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if she has 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 (September 2010), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The Department presented evidence to establish Respondent's intent during the IPV usage. The Department presented evidence of Respondent's lease agreements and/or U.S. Department of Housing and Urban Development (HUD) documents, which showed that she resided in [REDACTED] during the fraud period. See Exhibit A, pp. 49-124. Moreover, the FAP transaction history showed that Respondent used FAP benefits out-of-state in [REDACTED] during the fraud period. See Exhibit A, pp. 32-35. This evidence showed that Respondent no longer resided in Michigan and that she intentionally withheld information concerning an out-of-state move during the fraud period in order to maintain her Michigan FAP eligibility.

In summary, 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. The Department has established that Respondent committed an IPV of FAP benefits on the basis of a one-year disqualification.

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 subject to a disqualification under the FAP program. 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 and in consideration of the out-of-state use that began on [REDACTED], it is found that the appropriate OI begin date is [REDACTED]. See Exhibit A, pp. 5 and 32 and BAM 720, p. 7.

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.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from July 2011 to March 2012, which totaled \$4,257. See Exhibit A, pp. 125-126. It should be noted that the benefit summary inquiry failed to indicate that Respondent was issued FAP benefits from [REDACTED]. See Exhibit A, pp. 125-126. Therefore, the Department is entitled to recoup \$4,257 of FAP benefits it issued to Respondent from [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** established by clear and convincing evidence that Respondent committed an IPV on the basis of a one-year disqualification.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$4,257.

The Department is **ORDERED** to reduce the OI to \$4,257 for the period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be personally disqualified from FAP

benefits for **12 months and NOT 10 years.**



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/7/2015**

Date Mailed: **8/7/2015**

EF / hw

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:

