

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

[REDACTED]

Reg. No.: 15-001261
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 27, 2015
County: Genesee (06-Clio Road)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION FOR CONCURRENT BENEFITS
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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on July 27, 2015, from Detroit, Michigan. The Department was represented by [REDACTED]

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 10 years?

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 February 5, 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 notify the Department of any changes in her circumstances that might affect her benefits.
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 fraud period is April 15, 2013, through November 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$3,062 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,062.
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), p. 12.

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. 2.

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.

In this case, the Department is requesting a finding of concurrent use of FAP benefits in [REDACTED] and Michigan. The Department states in its hearing summary that Respondent “provided fraudulent information at application by reporting to DHS that she was no longer receiving public assistance from the [REDACTED].”

Verification from [REDACTED] shows that Respondent was actively receiving and utilizing FAP benefits from [REDACTED] through November 30, 2013.

However, the Department’s contention that she provided fraudulent information at application in Michigan by reporting that she was no longer receiving public assistance from [REDACTED] is false. On the second page of Respondent’s April 15, 2013, Michigan application, Respondent answered “yes” to the question as to whether she had recently moved from or was receiving benefits from another state. Respondent named the [REDACTED].

In light of this conflicting information, the statement that Respondent provided fraudulent information at application is incorrect based on the documentation provided at the hearing. Respondent’s correct response to the question of receiving benefits in another state provided evidence that the concurrent benefits enjoyed by Respondent were due to Department error.

The Department also raises the issue of Respondent’s use of Michigan-issued FAP benefits outside the State of Michigan. Respondent utilized Michigan-issued FAP benefits in the [REDACTED] from January 13, 2012, through February 11, 2012. This period of time would not qualify for sanction as the out-of-state use is less than 30 days.

Respondent again utilized Michigan-issued FAP benefits in the [REDACTED] from November 1, 2012, through January 3, 2013. These periods of out-of-state use (the latter being for a period of 63 days) and Respondent’s return to Michigan evidences Respondent’s intent to continue to be a Michigan resident. This Administrative Law Judge does not find Respondent in violation of the Department’s residency policy.

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, p. 15. 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. Will 16A 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. 1.

In this case, the OIG is requesting a disqualification period of 10 years based on Respondent's receipt of concurrent benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

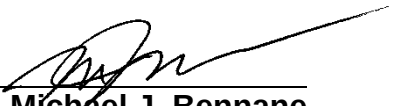
In this case, the amount of FAP benefits issued by the state of Michigan during the period of time that Respondent was receiving similar benefits from [REDACTED] results in an OI in the amount of \$3,062 due to Departmental error.

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 Respondent committed an IPV.
2. Respondent **did** receive an FAP OI in the amount of \$3,062.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$3,062 in accordance with Department policy.



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

Date Signed: **10/12/2015**

Date Mailed: **10/12/2015**

MJB / pf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]