

**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.: 15-001303
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 10, 2015
County: WAYNE-17

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 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 10, 2015, from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG).

Respondent appeared pro se.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should 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 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, and applied for benefits in April, 2012.
4. In June, 2012, Respondent's FAP benefits closed.
5. In June, 2013, Respondent's FAP benefits reopened, retroactive to July, 2012.
6. Respondent's benefit card was used in August, 2013, in the state of Oklahoma.
7. In July, 2012, Respondent opened a benefit case in the state of Oklahoma, which continued through the time periods at issue.
8. Due to the retroactive reopening of Respondent's Michigan FAP case, Respondent received two sets of benefits for the months of July 1, 2012 through July 31, 2013.
9. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2012 through July 31, 2013.
10. During the fraud period, Respondent was issued ██████ 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.
11. The Department alleges that Respondent received an OI in FAP benefits totaling the amount of ██████.
12. This was Respondent's first alleged IPV.
13. 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 (formerly the Department of Human Services) Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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-.3011.

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 (2014).

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 their reporting responsibilities.

BAM 700 (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 (2014).

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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of

using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$500 or more, or
- the total overissuance amount is less than \$500, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2014), p. 12.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 15.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance 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 (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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, with regard to the FAP program. Thus, the Department must not only prove that the Respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that Respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the Respondent intended to defraud the Department with regard to their FAP eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the Respondent was aware of the requirements to report at some point, nor is it enough to prove that the Respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the Respondent withhold critical information, but that the Respondent withheld this information with the intent to commit an IPV.

In other words, the Department must prove that the Respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has not proven that in the current case.

First, it is important to note that the Respondent did receive concurrent benefits from the states of Michigan and Oklahoma. However, it is not clear how this came about.

Respondent applied for benefits in April, 2012. This case, based on submitted documentary information, appears to have been closed around June 30, 2012. Respondent then began receiving benefits from the state of Oklahoma in July, 2012.

However, on June 19, 2013, Respondent's Michigan benefit case was reopened, retroactive to July, 2012. (Department Exhibit 6). A full year's worth of benefits were paid out on that date. It appears that this was in response to the Department, on its own, reacting to a semi-annual contact returned in June, 2012 and discovered in June, 2013, but no explanation was given by the Department as to how this turn of events came about, or why benefits were paid a year later, or why the case was reopened. There is no indication that the benefits were reopened at the request of the Respondent.

However, the benefits were reopened, and therefore, Respondent was, technically, receiving concurrent benefits for this period, even if the benefits were reopened retroactively.

However, the cornerstone of an intentional program violation is that the violation must be intentional, and the undersigned does not believe that the violation here was intentional.

Respondent credibly testified that she was not even aware that her Michigan benefits had reopened. The undersigned found Respondent credible, given the year that had passed since benefit closure. Furthermore, there was no evidence that Respondent was the person who actually used the Michigan benefits. Respondent testified that she had thrown her Michigan EBT card away, which is reasonable, given the length of time between benefit periods. Additionally, the transaction history (Department Exhibit 11) shows some benefits had been spent in Michigan, and there is no evidence Respondent was ever in Michigan.

For these reasons, the undersigned holds that the evidence is not clear and convincing to show that Respondent intentionally received concurrent benefits, and thus a 10 year disqualification requested by the Department would be inappropriate.

This is not to say that there was no error in this case. Respondent also testified that she thought her mother was the person in possession of the EBT card, and testified that her mother had returned to Michigan during time periods that matched the EBT card transactions. Per testimony, Respondent had given the Michigan EBT card to her mother and instructed her to "throw it away". Respondent never saw whether her mother actually threw away the EBT card.

Furthermore, Respondent's mother was not an authorized user on the card, though Respondent testified that she allowed her mother to use it, and gave her mother the PIN code needed to access benefits on the card.

The information given to the Respondent at application states that Respondent could be liable if she gave her PIN to another person, and that person used those benefits.

Therefore, as Respondent testified that she gave her mother access to the EBT card, Respondent is ultimately responsible for the use of those benefits.

Per Respondent's testimony, Respondent's mother had possession of, and used the card. Respondent's mother could not have used the card had Respondent not allowed it. Therefore, Respondent is responsible for the benefits used concurrently, in this case, \$4771.

The Administrative Law Judge, after reviewing the supplied issuance budgets, has calculated that the Respondent received ██████ in FAP benefits they were not eligible for. The undersigned holds this to be client error, as the Respondent presented no evidence that the agency was at fault for the overissuance, and Respondent has not

