

**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.: 15-003500
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 9, 2015
County: WAYNE-DISTRICT 41

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 July 9, 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 March 12, 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.
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 February 1, 2013 to August 31, 2013, and April 1, 2014 to September 30, 2014 (fraud periods).
7. During the fraud periods, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 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 and 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, 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, pp. 1-2. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (November 2012 and February 2014), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

In this case, the Department alleges 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.

First, the Department presented Respondent's application dated September 13, 2009, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 27-49.

Second, the Department presented Respondent's application dated October 17, 2013, which was submitted between both alleged fraud periods. See Exhibit A, pp. 50-81. In the application, Respondent reported a Michigan address, she is a resident of Michigan, and that she did not move or receive assistance from another state. See Exhibit A, pp. 52-54.

Third, the Department presented out-of-state correspondence from the State of Ohio dated March 7, 2015, which reported that Respondent received Medical Assistance (MA) benefits from March 2014 to February 2015. See Exhibit A, p. 82.

Fourth, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 83-89. The FAP transaction history showed that from January 5, 2013 to August 3, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in Ohio. See Exhibit A, pp. 83-84. Then, Respondent conducted transactions in Michigan from August 13, 2013 to February 21, 2014. Exhibit A, pp. 84-87. Finally, Respondent conducted transactions in Ohio from February 22, 2014 to September 17, 2014. Exhibit A, pp. 87-89.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud periods, represented that she was in

Michigan. Department policy does not prohibit out-of-state usage when the individual intends on coming back. The Department did not present evidence to establish Respondent's intent during the alleged fraud periods, other than the FAP transaction history/LexisNexis report/out-of-state correspondence. However, this 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 periods.

Furthermore, the Department presented Respondent's application dated October 17, 2013, which was submitted between both alleged fraud periods. See Exhibit A, pp. 50-81. The Department indicated that this evidence will show that Respondent misrepresented her circumstances of eligibility. See Exhibit A, p. 10. The Department testified that Respondent was residing in the State of Ohio when she applied for Michigan issued FAP benefits per the LexisNexis report indicating voter registration and driver's license history. See Exhibit A, pp. 10 and 14-26. However, Respondent's FAP transaction history showed that she conducted transactions in the State of Michigan during the period of the application. See Exhibit A, p. 85. Thus, this instead shows that Respondent resided in Michigan at the time of the application dated October 17, 2013. As such, this 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 periods.

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

As stated previously, the Department failed to show that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan. Thus, no IPV was committed. 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.

Based on the FAP transaction history, it is persuasive evidence that Respondent was not a Michigan resident. See BEM 220, pp. 1-2. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. Moreover, the FAP transaction history shows that Respondent was using benefits out-of-state for more than thirty days. See BEM 212, p. 3. This established that Respondent is not temporarily absent from her group and she was not eligible for FAP benefits. Therefore, a client error is present in this situation because Respondent failed to notify the Department of her change in residency. See BAM 715, p. 1.

As to the first OI period, applying the OI begin date policy and in consideration of the out-of-state use that began on January 5, 2013, the Department determined that the OI period began on February 1, 2013. See Exhibit A, pp. 4 and 83. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5. However, the Department applied the inappropriate end date. The overissuance period ends the month (or pay period for CDC) before the benefit is corrected. See BAM 715, p. 6. In this case, Respondent began using Michigan issued FAP benefits in Michigan for a majority of the August 2013 benefit period; thus, the evidence established that Respondent returned to Michigan in August 2013. See Exhibit A, pp. 84-85. Therefore, the OI period end date is July 31, 2013. See BAM 715, pp. 4-6.

As to the second OI period, applying the OI begin date policy and in consideration of the out-of-state use that began on February 22, 2014, the Department determined that the OI period began on April 1, 2014. See Exhibit A, pp. 4 and 87. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

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 715, p. 6.

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 February 2013 to July 2013, and April 2014 to September 2014, which totaled [REDACTED]. See Exhibit A, pp. 11-13. Thus, the Department is entitled to recoup [REDACTED] of FAP

