

**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.: 15-003650
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 8, 2015
County: OAKLAND-DISTRICT 4
(NORTH SAGINAW)

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 8, 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 17, 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 that authorized representatives (AR) chosen by the Respondent can only access the FAP account.
5. Respondent had no 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 1, 2012 to September 30, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$1,200 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 [REDACTED].
9. This was Respondent's first alleged IPV.
10. On April 2, 2015, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Disqualification Hearing, which scheduled a hearing on May 7, 2015.
11. On May 6, 2015, the Administrative Law Judge (ALJ) sent both parties an Adjournment Order.
12. On May 8, 2015, MAHS sent both parties a Notice of Disqualification Hearing, which rescheduled the hearing for June 8, 2015.
13. The 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 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 Department will help determine who must be included in the FAP group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212 (April 2012), 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; and
4. Whether the person(s) resides in an eligible living situation.

BEM 212, p. 1.

Electronic Benefit Transfer (EBT) allows clients who receive cash (FIP, SDA etc.), and food (FAP) to receive their benefits using debit card technology. BAM 401E (December 2011), p. 1. Benefits are deposited electronically into a cash and/or food account. Clients access their benefits by using their personal identification number (PIN), along with their Bridge card. BAM 401E, p. 1.

The authorized representative (AR) is chosen by the client and can only access the FAP account. BAM 401E, p. 1. It is the client's responsibility to give the Bridge card and the PIN to the AR. BAM 401E, p. 2.

In this case, the Department alleged that Respondent committed an IPV of his FAP benefits due to unauthorized use of his EBT card in Texas. See Exhibit A, p. 1. The Department argued that Respondent acknowledged that he allowed his son (unauthorized representative) to allegedly make purchases for food in Texas and ship them to Michigan because his father (Respondent) was ill. See Exhibit A, pp. 1-2.

First, the Department presented Respondent's application dated March 10, 2012, to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 11-41. In the application, Respondent reported that the group size was one. See Exhibit A, p. 14.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 42-54. The FAP transaction history showed that from November 18, 2011 to September 14, 2012, Respondent's FAP benefits were used out-of-state in Texas. See Exhibit A, pp. 51-52.

Third, the Department presented a written statement from Respondent dated March 10, 2015, in which he wrote that his son would purchase for Respondent by mail or in-person while he was sick. See Exhibit A, p. 65. Moreover, the OIG agent also spoke with the Respondent on March 10, 2015. Based on evidence presented, it can be inferred that the Respondent's argument was that he allowed his son in Texas to make purchases for him and ship them to Michigan while he was ill. See Exhibit A, pp. 4 and 65. Moreover, on March 10, 2015, Respondent reported to the OIG agent that his son had possession of his card in Texas. See Exhibit A, p. 4.

Fifth, the Department presented Respondent EBT card profile, which indicated only one card had been issued for Respondent and there were no authorized users. See Exhibit A, p. 64.

Based on the foregoing information, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP benefits. The evidence established that Respondent's FAP group size was one and there were no authorized users on his account, which meant that the Respondent was the only eligible group member to use his EBT card. Moreover, the undersigned does not find Respondent's argument credible that his son would buy and ship him food for him from Texas. A review of Respondent's FAP transaction history finds multiple small dollar transactions (i.e., [REDACTED]) that would not support the Respondent's argument. The undersigned does not find it credible that the son would purchase \$2.38 in eligible food products and then ship it to Michigan. In fact, it appears the most probable explanation is that Respondent's son used the FAP benefits for himself in Texas. It should also be noted that Respondent failed to be present at the hearing to rebut the Department's testimony and evidence. Nevertheless, the evidence is persuasive that Respondent committed an IPV of his FAP benefits by allowing someone else (his son) to use and have access to his food benefits who was not an eligible group member/authorized user. See BEM 212, p. 1 and BAM 401E, pp. 1-2.

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 November 18, 2011, the Department determined that the OI period began on April 1, 2012. See Exhibit A, pp. 4 and 51. It is found that the Department applied the appropriate OI begin date. 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 April 2012 to September 2012, which totaled [REDACTED]. See Exhibit A, p. 66. Therefore, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from April 1, 2012 to September 30, 2012.

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.
2. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the FAP benefits.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.

[illegible]