

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

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

MAHS Reg. No.: 15-005258  
Issue No.: 3005  
Agency Case No.: ██████████  
Hearing Date: June 17, 2015  
County: WAYNE-DISTRICT 41

**ADMINISTRATIVE LAW JUDGE: Robert J. Chavez**

**AMENDED 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held June 17, 2015 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge ██████████ and mailed on September 16, 2015 which is hereby **AMENDED** to correct typos regarding the ultimate disposition of the case.

The previous Decision and Order is amended as follows.

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. All Findings of Fact contained in the original Hearing Decision dated September 16, 2015 remain unchanged and are incorporated herein by reference.

**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). Prior to Bridges implementation, 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, DHS 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 (2014), 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 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. 16. 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. In addition, the undersigned is 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 proven that in the current case. Respondent filed an application for FAP benefits on August 13, 2014. The Respondent's statement of benefits shows that the benefits were used out of state beginning in January, 2014. Additionally, Respondent applied for Medicaid benefits in Illinois in May, 2014 and began receiving them at the same time. On that application, Respondent reported herself as residing in the state of Illinois.

Normally, in these types of cases, the undersigned holds that there is no IPV absent a showing that Respondent was actually living in the state in question and intentionally failed to report. However, in the current matter, the Department has met that threshold.

When Respondent applied for benefits in August, 2014, Respondent was not a resident of the State of Michigan.

Contrary to popular belief, BEM 220, Residency, does not set any particular standard as to when a person is legally residing in another state, nor does it state that the simple act of using food benefits in another state counts as residing in that other state. BEM 220 does not give a maximum time limit that a Respondent may leave the state and lose residency in the State of Michigan. The simple act of leaving the state—even for an extended length of time—does not in any way remove a benefit’s residency status for the purposes of the FAP program.

However, this case is distinguished from the typical circumstance contemplated by BEM 220 by the simple fact that, when Respondent applied for FAP benefits in August 2014, Respondent was not a resident of the State of Michigan; as such, Respondent would not have been approved for benefits in August had she accurately represented her residence. Respondent was receiving benefits from a different state; Respondent held herself out as residing in that different state; Respondent had an address in that different state. These factors, when taken together show that Respondent was not a resident of Michigan when applying in August 2014, and as such, misrepresented her residency circumstances, thus leading to the unescapable conclusion that Respondent committed an IPV.

As such, the undersigned holds that Respondent committed an IPV when she applied for FAP benefits in Michigan and held herself out as a resident of Michigan, even though her residence was in a different state.

With regard to the OI, the Department has submitted OI summaries relying on benefits Respondent received while legally a resident of the other state; this summary was not objected to, and as such, the undersigned holds that Respondent received an OI of [REDACTED] in FAP benefits.

### **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. Respondent did commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] in FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program for a period of 12 months.

**IT IS SO ORDERED.**



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**Robert J. Chavez**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **10/29/2015**

Date Mailed: **10/29/2015**

RJC/tm

**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. **A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).**

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

cc: [REDACTED]  
OIG  
Wayne-District 41 (Fort Wayne)  
[REDACTED]  
DHS-OIG Hearings  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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