

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

IN THE MATTER OF:

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

Reg. No.: 15-006154
Issue No.: 2000; 3005
Case No.: ██████████
Hearing Date: July 9, 2015
County: WAYNE-DISTRICT 41

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on July 9, 2015, from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent from 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) and Medical Assistance (MA) 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 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 April 27, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residence.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the FAP fraud period is September 1, 2010 to June 30, 2011.
7. The OIG indicates that the time period they are considering the MA OI period is September 1, 2010 to June 30, 2011.
8. During the alleged fraud period, Respondent was issued [REDACTED] in FAP and MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP benefits from the State of West Virginia.
10. This was Respondent's third alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No.

111-152; and 42 CFR 430.10-.25. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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.

In this case, the Department alleged that Respondent committed an IPV because she continued to receive and use FAP and MA benefits issued by the State of Michigan while out-of-state. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing, it was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV and the Department's MA hearing request is hereby DISMISSED.

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 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (May 2010), p. 1. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. A person cannot receive FAP in more than one state for any month. BEM 222, p. 2. Except, a resident of a shelter for battered women and children may temporarily be a member of two FAP groups. BEM 222, p. 2. Out-of-state benefit receipt or termination may be verified by one of the following: DHS-3782, Out-of-State Inquiry; Letter or document from other state; or Collateral contact with the state. BEM 222, p. 3.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826 or DHS-830) of having made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (January 2009), p. 1.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to update residency information for the purpose of receiving FAP benefits from more than one state.

First, the Department presented Respondent's applications dated August 31, 2009 and July 27, 2010, to show that she acknowledged her responsibility to report changes as

required. See Exhibit A, pp. 14-44. Based on the evidence submitted, it appeared that Respondent's Michigan FAP group size was four (Spouse plus three children) as the Respondent appeared disqualified.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 45-48. The FAP transaction history showed that from September 4, 2010 to June 29, 2011, Respondent used FAP benefits issued by the State of Michigan in West Virginia (majority), except in Michigan from February 8-9, 2011, and September 17, 2012. See Exhibit A, pp. 45-48.

Third, the Department presented several out-of-state correspondences, including license verification, out-of-state applications, etc....See Exhibit A, pp. 50-137. The documentation confirmed that Respondent's children received FAP benefits from West Virginia during the alleged fraud period. See Exhibit A, pp. 50-52. Based on the evidence submitted, it appeared that Respondent's West Virginia FAP group size was three (three children) as the Respondent appeared to be disqualified and no evidence indicated that the spouse received FAP benefits.

Moreover, the Department presented Respondent's benefit summary inquiry, which showed that she received Michigan FAP benefits from September 2010 to June 2011. See Exhibit A, pp. 141-142. As such, the Department argued that Respondent received FAP benefits simultaneously from September 2010 to June 2011 (alleged fraud period).

Fourth, the Department presented Respondent's West Virginia public assistance applications dated August 24, 2010 and February 11, 2011. See Exhibit A, pp. 56-110.

In regards to Respondent's August 24, 2010 application, she completed and signed three different forms that were associated with this application. See Exhibit A, pp. 56-84. These forms are described as follows: (i) a screening form in which Respondent selected which benefits she is applying for; (ii) an electronic printout of her application; and (iii) a rights and responsibilities form. See Exhibit A, pp. 56-84. In the electronic application, Respondent selected "no" for each household member as to the following question, "Has this person received Supplemental Nutrition Assistance Program (SNAP) benefits from another State?" See Exhibit A, pp. 61-63. It should be noted that a signed letter was submitted indicating that Respondent and her spouse were renting a trailer from this individual because they just moved in on August 1, 2010. See Exhibit A, p. 85.

In regards to Respondent's February 11, 2011 application, she completed and signed four different forms that were associated with this application. See Exhibit A, pp. 86-110. These forms are described as follows: (i) a screening form in which Respondent selected which benefits she is applying for; (ii) an electronic printout of her application; (iii) a rights and responsibilities form; and (iv) a request for assistance form. See Exhibit A, pp. 56-84. In the electronic application, Respondent again selected "no" to the above question, even though the Department argued that FAP benefits were received

simultaneously from the State of Michigan at the time of the application. See Exhibit A, pp. 89-90. It should be noted that in the request for assistance form, Respondent marked “no” to the question if she has received SNAP benefits this month, but appeared to mark “yes” to the question if she is staying in a shelter for battered women. See Exhibit A, p. 100. This appeared to be an error by the Respondent because she marked “yes” to the question that she has an obligation to pay a utility expense, which would not be an obligation when staying in a shelter for battered women. See Exhibit A, p. 100.

It should be noted that the Department also presented Respondent’s out-of-state application dated July 1, 2011; however, the undersigned had difficulty reviewing several sections of the application (not properly scanned into the computer). See Exhibit A, pp. 111-137.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

First, the evidence established that FAP benefits were received simultaneously (Michigan and West Virginia) from September 2010 to June 2011. See Exhibit A, pp. 50-52 and 141-142.

Second, in regards to Respondent’s application dated February 11, 2011, she selected “no” to the question if her and her group member’s received SNAP benefits from another State, even though the evidence established that the group members were receiving FAP benefits from Michigan at the time. See Exhibit A, pp. 89-90 and 141-142. In fact, the FAP transaction history showed that from September 4, 2010 to June 29, 2011, Respondent used FAP benefits issued by the State of Michigan in West Virginia (majority), except in Michigan on February 8-9, 2011, and September 17, 2012. See Exhibit A, pp. 45-48. Therefore, this evidence is sufficient to show that Respondent made a fraudulent statement or representation regarding her and her group member’s residence in order to receive multiple FAP benefits simultaneously from Michigan and West Virginia. See BEM 203, p. 1.

In summary, there was clear and convincing evidence that Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information for the purpose of maintaining Michigan FAP eligibility. Therefore, the Department has established by clear and convincing evidence 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from the FAP program for lifetime based on her third FAP IPV. BAM 720, p. 16; Exhibit A, pp. 138-140; 7 CFR 273.16(b)(1)(iii) (Permanently for the third occasion of any IPV); and 7 CFR 273.16(b)(5) (Except as provided under paragraph (b)(1)(iii) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years).

Overissuance

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 the present case, Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from September 1, 2010 to June 30, 2011. See BAM 720, pp. 7 - 8 and Exhibit A, pp. 141-142.

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. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of [REDACTED].

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

It is **ALSO ORDERED** that the Department's MA hearing request is **DISMISSED**.

Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Health and Human Services

Date Mailed: **7/20/2015**

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).

[illegible]