

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007642
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 23, 2015
County: WAYNE-DISTRICT 57

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 23, 2015, from Detroit, Michigan. The Department was represented by [REDACTED], 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 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 [REDACTED], 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 benefits issued by the Department.
4. On the Assistance Application signed by Respondent on [REDACTED], Respondent reported that he was a Michigan resident. See Exhibit A, p. 15.
5. Respondent was aware of the responsibility to report changes in his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning on [REDACTED].
8. The OIG indicates that the time period they are considering the fraud period is [REDACTED].
9. During the alleged fraud period, Respondent was issued \$1,323 in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Alabama.
11. This was Respondent's first alleged IPV.
12. 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), 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.

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.

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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (July 2013), 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. 3. 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. 4.

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 (such as a DHS-826 or DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (July 2013 and July 2014), p. 1.

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

First, the Department presented Respondent's application dated [REDACTED], to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 11-40. In this application, Respondent reported that he has not moved or received assistance from another state. See Exhibit A, p. 15. Moreover, Respondent did report that he lived in Michigan, but indicated a mailing address in [REDACTED]. See Exhibit A, p. 13.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 45-49. The FAP transaction history showed that from [REDACTED] to [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED]. See Exhibit A, pp. 45-49.

Third, the Department presented Respondent's alleged social media profile. See Exhibit A, pp. 61-65. Moreover, the Department presented Respondent's LexisNexis report, which provided a current address in [REDACTED]. See Exhibit A, pp. 43-44.

Fourth, the Department presented out-of-state correspondence to show Respondent received FAP benefits simultaneously in [REDACTED]. See Exhibit A, pp. 66-67. The documentation confirmed that Respondent received FAP benefits in [REDACTED] from September 2014 to May 2015 (e-mail dated May 19, 2015). See Exhibit A, p. 66. The out-of-state documentation also indicated that he applied for FAP benefits in [REDACTED] on [REDACTED]. See Exhibit A, p. 66. Moreover, the Department presented Respondent's benefit summary inquiry, which showed that he received Michigan FAP benefits from January 2014 to September 2014. See Exhibit A, pp. 41-42. As such, Respondent received FAP benefits simultaneously for September 2014.

Fifth, the OIG investigative report indicated that the OIG agent spoke with Respondent on [REDACTED]. See Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department has failed to establish a basis for a ten-year disqualification period. In this case, Respondent applied for FAP benefits out-of-state in the same month in which his benefits ended in Michigan. Yes, Respondent did have an overlap of FAP benefits for one month. However, subsequent to his out-of-state application, he did not receive benefits concurrently. There is certainly an OI present for the month of September 2014. However, the Department must establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits for this one month. The undersigned finds that the Department failed to establish by clear and convincing evidence that for this one-month, Respondent made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

Nevertheless, the Department sought a one-year disqualification for the FAP program based on his out-of-state residence. The Department alleged that Respondent committed an IPV of his FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state.

To be eligible, a person must be a Michigan resident. BEM 220 (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 (February 2014), p. 3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 3.

Again, though, 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 period, represented that he was in Michigan. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other

than the FAP transaction history/out-of-state-email. 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 period.

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 or for the purpose of receiving FAP benefits from more than one state, 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 not is subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As previously stated, the Department has not established that Respondent committed an IPV of FAP benefits. 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, p. 1. 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 his group and he was not eligible for FAP benefits. Therefore, a client error

is present in this situation because Respondent failed to notify the Department of his change in residency. See BAM 715, p. 1. It should be noted that a client error is also present for September 2014 as Respondent received concurrent benefits for that month.

Applying the OI begin date policy and in consideration of the out-of-state use that began on [REDACTED], the Department determined that the OI period began on [REDACTED], [REDACTED]. See Exhibit A, pp. 4 and 45. 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 March 2014 to September 2014, which totaled \$1,323. See Exhibit A, p. 41. Therefore, the Department is entitled to recoup \$1,323 of FAP benefits it issued to Respondent from [REDACTED].

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$1,323.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$1,323 in accordance with Department policy.



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

Date Signed: **7/28/2015**
Date Mailed: **7/28/2015**

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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).

cc:

