

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

IN THE MATTER OF:



MAHS Reg. No.: 15-007717
Issue No.: 3005
Agency Case No.: [REDACTED]
Hearing Date: July 08, 2015
County: WAYNE-DISTRICT 17

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, 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 on July 8, 2015 from Detroit, Michigan. The Department was represented by [REDACTED] 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) and Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

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 May 26, 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 filed an application for FAP benefits in the State of Michigan on January 7, 2014 and began receiving and using benefits on or about that date.
5. Respondent began receiving food benefits from the state of Texas after filing an application there in April, 2014.
6. Respondent was receiving and using food stamp benefits from both states during the period of April 1, 2014 through May 31, 2014; Respondent was also using benefits out of state beginning in August 2013.
7. The OIG indicates that the time period they are considering the fraud period is August 1, 2013 through May 31, 2014.
8. During the alleged fraud period, Respondent was issued [REDACTED] benefits and \$ [REDACTED] benefits from the State of Michigan; the Department contends that Respondent was entitled to \$0 in these benefits
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), 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 (FS) program] is established by the Food Stamp Act of 2008, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

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 p. 6; BAM 720, p. 1 (2014).

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, 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. 13. 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. Additionally, 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 was receiving FAP benefits after applying for benefits in Michigan in October, 2012; Respondent reapplied for benefits in January, 2014. These benefits were approved and started around that same time, and continued through May, 2014. Respondent began receiving benefits from the state of Texas in April, 2014, after applying in Michigan. Respondent therefore not only received benefits for these states at identical times and did not report this fact, but must have misrepresented their eligibility to the state of Texas in order to be approved for benefits. Furthermore, Respondent was receiving and using benefits Texas at the time they were using benefits from Michigan.

The Administrative Law Judge believes that this is clear and convincing evidence that the Respondent intended to defraud the Department.

Therefore, the undersigned holds that Respondent unlawfully received concurrent FAP benefits, and was therefore overissued for the periods indicated by the Department.

With regard to the other OI period prior to the concurrent benefit usage, that the Department seeks with regards to residency, the undersigned notes that Respondent originally applied for benefits in the state of Texas in August, 2013; at that point Respondent was holding themselves out as a resident of Texas. Combined with employment at around that time and Respondent's established concurrent benefit usage, the undersigned shifts the burden of proof to the Respondent to show that they were still a resident of Michigan with regards to this OI period. Respondent failed to dispute the OI findings or their Texas residency; as a result the undersigned holds that the OI period is undisputed and holds that the Department may recoup for the entire period.

With regards to the MA overissuance, BAM 710, pg. 2 states that the amount of the overissuance in most cases is the "amount of the MA payments". However, BAM 710 does not define the term "MA payments".

A plain reading of the term would suggest that the term "MA payments" means the amount the Department paid to medical providers for Respondent's MA benefits; this amount would not include the cost of administering the MA program for DHHS client.

The Department, as support for their MA overissuance contention, submitted a list of the premiums paid by the Department for administering Respondent's inclusion in the MA program.

The undersigned declines to find this amount as an overissuance. After researching both state and federal law, including the Code of Federal Regulations, the undersigned can find no support allowing for the recoupment of administrative costs (such as premiums) for a client error or IPV in the MA program. BAM 710 contemplates specifically recouping differences in deductibles when the deductible amount is the result of a client error or IPV; such a recoupment would be recouping specific payments for treatment and care under the MA program. There is no mention of administrative costs in policy, or state or federal law, and as such, the undersigned cannot find that a request to recoup such costs is lawful absent specific policy allowing it.

As policy does not specifically define MA payments to include administrative premium costs, the undersigned finds that the Department improperly requested recoupment of such costs.

As Respondent intended to defraud the Department for the purposes of receiving benefits, Respondent has committed an Intentional Program Violation.

Because the claimant committed an Intentional Program Violation with regards to concurrent benefits, the Department has properly requested a [REDACTED] year disqualification period for FAP eligibility and a recoupment of the [REDACTED] in FAP benefits that were unlawfully issued.

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 in the Food Assistance Program by clear and convincing evidence.
2. Respondent did receive an OI of Food Assistance Program benefits in the amount of [REDACTED] in FAP benefits.
3. Respondent did not receive an OI of MA benefits in the amount of [REDACTED]
4. The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the Food Assistance Program for [REDACTED] years.



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

Date Signed: **12/4/2015**

Date Mailed: **12/4/2015**

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).

cc:

