

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-009324
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 27, 2015
County: JACKSON

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 July 27, 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 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 [REDACTED], 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 to report changes in residence and group composition.
5. Respondent did not have an 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 [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$1,264 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 \$1,264.
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), 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.

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.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2014), p. 9. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 9. These include, but are not limited to, changes in persons in the home. BAM 105, p. 9.

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, 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.
4. Whether the person(s) resides in an eligible living situation.

BEM 212, p. 1.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan and that she was no longer a FAP group member. The Department argued that Respondent moved to California and left her children with various family members, yet, still collected FAP benefits for them.

First, the Department presented Respondent's online application dated [REDACTED], [REDACTED] to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 12-48.

Second, the Department presented Respondent's employment verification, which was current as of [REDACTED]. See Exhibit A, pp. 52-54. The employment verification

reported a California address for the Respondent and indicated that she received wages from [REDACTED]. See Exhibit A, pp. 52-54.

Third, the Department presented a Front-End Eligibility (FEE) Investigation Report (FEE report) dated [REDACTED]. See Exhibit A, pp. 10-11. The FEE report indicated that an OIG agent (not the agent present for this hearing) spoke to the children's grandmother (Respondent's mother) on [REDACTED]. See Exhibit A, p. 10. The FEE report indicated the following from the conversation: (i) Respondent went to [REDACTED] for vacation on [REDACTED]; (ii) two of Respondent's children were left in the Respondent's mother care; (iii) one of Respondent's children was left in the care of the paternal grandparents; (iv) she was notified that Respondent obtained employment in [REDACTED] (v) she has possession of Respondent's Bridge card and used it to purchase foods for her household while the Respondent had been gone; and (vi) she has her own FAP case and has not applied to add her grandchildren to that case. See Exhibit A, p. 10.

Additionally, on [REDACTED], the OIG agent spoke with the Respondent and the FEE report indicated the following from the conversation: (i) Respondent advised that nothing has changed with her case with the exception of her being in [REDACTED] the past month; (ii) she indicated her three children are with the grandparents; (iii) she left for [REDACTED] with a round-trip ticket, but she lost her identification that prevented her from boarding the plane for a return trip; (iv) a [REDACTED] post from Respondent indicated that she is saving money for a ticket to return to Michigan; and (v) she admitted to giving her Bridge card to her mother and letting her use it while she has been gone. See Exhibit A, p. 11.

Finally, on [REDACTED], the OIG agent spoke with the paternal grandfather who was watching one of the Respondent's children and the FEE report indicated the following from the conversation: (i) the child has been living with he and his wife (paternal grandparents) for the past two years; (ii) the paternal grandfather reports that from June 2012 to September 2012 the son lived with them exclusively and the son returned to Respondent in September 2012 for a couple months and then returned to their care in November 2012; and (iii) the paternal grandfather has not heard from Respondent since on or about [REDACTED]. See Exhibit A, p. 11.

Based on the foregoing information and evidence, 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 she intentionally withheld her residency/group composition information (i.e., signed redetermination during the alleged fraud period reporting no changes in household composition).

Moreover, the Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the FEE report and employment verification. However, this failed to show by clear and convincing evidence that Respondent

intentionally withheld information concerning an out-of-state move/group composition information for the purpose of maintaining Michigan FAP eligibility.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move and/or group composition information for the purpose of maintaining Michigan FAP eligibility, 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 is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent committed an IPV of her 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 employment verification, it is persuasive evidence that Respondent was not a Michigan resident. See BEM 220, pp. 1-2. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. Moreover, the employment verification/FEE report shows that Respondent was out-of-state for more than thirty days. See BEM 212, p. 3. This established that Respondent is not temporarily absent from her group and she was not eligible for FAP benefits. Therefore, a client error is present in this situation because Respondent failed to notify the Department of her change in residency and group composition. See BAM 715, p. 1.

Applying the OI begin date policy and in consideration that Respondent was out-of-state on or around March 26, 2014, the Department determined that the OI period began on [REDACTED]. See Exhibit A, pp. 4 and 10. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

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 715, p. 6.

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 May 2014 to June 2014, which totaled \$1,264. See Exhibit A, p. 51. Thus, the Department is entitled to recoup \$1,264 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, if any, 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 program benefits in the amount of \$1,264 from the FAP program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,264 in accordance with Department policy.



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

Date Signed: **7/30/2015**

Date Mailed: **7/30/2015**

EF / hw

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:

