

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

IN THE MATTER OF:



Reg. No.: 201219869
Issue No.: 2000; 2052; 3052
Case No.: [REDACTED]
Hearing Date: April 18, 2012
County: Genesee (06)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

**HEARING DECISION FOR
CONCURRENT FAP BENEFITS
INTENTIONAL PROGRAM VIOLATION (IPV) HEARING
AND
DISMISSAL OF MA IPV HEARING**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the request by the Department of Human Services (Department) for a hearing. After due notice, a telephone hearing was held on April 18, 2012 from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

- Participants on behalf of Respondent included: .
- 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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP) Food Assistance Program (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 December 6, 2011 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly having committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP FIP MA benefits during the period of April 2009 through January 2010.
4. On the Assistance Application signed by Respondent on March 23, 2009, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her 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 FIP MA benefits outside of the State of Michigan beginning in July 7, 2009.
8. The OIG indicates that the time period they are considering the fraud period is August 2009 through January 2010.
9. During the alleged fraud period, Respondent was issued \$1200 in FAP FIP MA benefits and \$1028.18 in FAP FIP MA benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Missouri.
11. The Department has has not established that Respondent received concurrent benefits and thus committed an IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, 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.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

Dismissal of Respondent's MA IPV Hearing

Subsequent to the scheduling of the current hearing and prior to the hearing date, the Notice of Hearing and accompanying documents (which established due notice) were mailed to Respondent via first class mail at the last known address and were returned by the United States Postal Service as undeliverable. Department policy dictates that when correspondence sent to Respondent concerning an intentional program violation (IPV) is returned as undeliverable, the hearing cannot proceed with respect to any program other than Food Assistance Program (FAP). BAM 725. Thus, the Request for an IPV Hearing concerning Respondent's MA program benefits is dismissed for lack of jurisdiction. The hearing proceeded with respect to the alleged FAP IPV.

Respondent's FAP IPV Hearing

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700.

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.

IPV is suspected when there is 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.

The Department's Office of Inspector General (OIG) requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor, or
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more, or
 - the total overissuance amount is less than \$1000, 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.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720. 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. 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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710.

Additionally, in this case, the Department established that Respondent received monthly FAP benefits of \$200 from the State of Michigan from April 1, 2009 to January 2, 2010, and that she was consistently using FAP benefits issued by the State of Michigan in Missouri beginning July 7, 2009 until January 8, 2010. The Department also established that it was notified by Missouri authorities that Respondent had a Missouri address as of August 2009 where she continued to reside as of January 2010 and began receiving Missouri FAP benefits on August 13, 2009, which she continued to receive through January 2010. Evidence that Respondent intentionally used FAP benefits issued by the State of Michigan in Missouri while receiving food benefits in Missouri provided clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or

preventing reduction of FAP benefits or eligibility. Thus, the Department satisfied its burden of establishing that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits. Respondent is therefore subject to a 10 year FAP disqualification. BAM 720.

At the hearing, the Department sought to recover an OI of FAP benefits of \$1200 for the period from August 2009 through January 2010. The OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date the OI was referred to the Recoupment Specialist, whichever is later. BAM 715; BAM 720. To determine the first month of the OI period, the Department must take into consideration (i) the client reporting period per BAM 105, (ii) the full standard of promptness for change processing per BAM 220, and (iii) the full negative action suspense period per BAM 220. BAM 715; BAM 720.

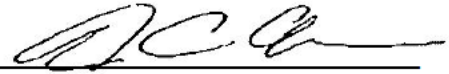
In this case, Respondent began using her Michigan FAP benefits in Missouri on July 7, 2010. Taking into account the client reporting period, the standard of promptness for processing changes and the full negative action suspense period, the OI period began in September 2009, rather than August 2009 as put forth by the Department. Removing the \$200 FAP benefit Respondent properly received in August 2009 reduces the OI to Respondent to \$1000.

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's Request for an IPV hearing concerning Respondent's MA benefits is DISMISSED.
 2. Respondent did did not commit an IPV with respect to her FAP benefits.
 3. Respondent did did not receive an OI of program benefits in the amount of \$1000 from the following program(s) FAP FIP MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$ _____ in accordance with Department policy.
- The Department is ORDERED to reduce the OI to \$1000 for the period September 2009 through January 2010, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years. This disqualification period shall begin immediately as of the date of this Order.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 20, 2012

Date Mailed: April 20, 2012

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

ACE/hw

cc:

