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

#### IN THE MATTER OF:



Reg. No.: 201274709 Issue No.: 3052; 2052 Case No.:

Hearing Date: October 18, 2012 County: Macomb (12)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

## **HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

This matter is before the undersigned Admin and MCL 400.37 upon the Department of Hhearing. After due notice, a telephone head Detroit, Michigan. The Department was read agent of the Office of Inspector General (OIC)	uman Services' (Department) request for a aring was held on October 18, 2012, from epresented by Regulation
Participants on behalf of Respondent incl	uded: .
☑ Respondent did not appear at the hearing pursuant to 7 CFR 273.16(e), Mich Admin C 400.3187(5).	•
ISSU	<u>IES</u>
<ol> <li>Did Respondent receive an overissuance         ☐ Family Independence Program (FIP)         ☐ State Disability Assistance (SDA)         ☐ Medical Assistance (MA)         benefits that the Department is entitled to</li> </ol>	Food Assistance Program (FAP) Child Development and Care (CDC)
2. Did Respondent commit an Intentional Pr	ogram Violation (IPV)?
3. Should Respondent be disqualified from r ☐ Family Independence Program (FIP) ☐ State Disability Assistance (SDA)	receiving Solution Food Assistance Program (FAP) Child Development and Care (CDC)?

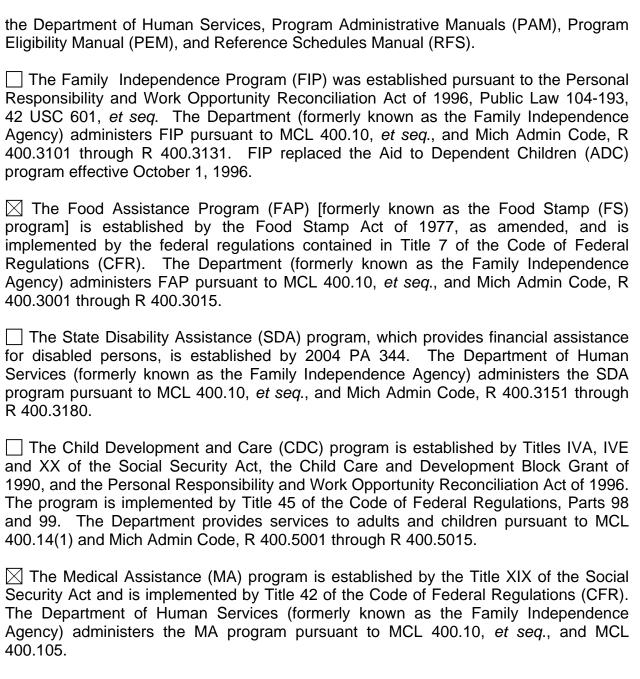
# **FINDINGS OF FACT**

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 September 10, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2.	The OIG $\boxtimes$ has $\square$ has not requested that Respondent be disqualified from receiving program benefits.
3.	Respondent was a recipient of $\  \   \Box$ FIP $\  \   \Box$ FAP $\  \   \Box$ SDA $\  \   \Box$ CDC $\  \   \Box$ MA benefits during the relevant periods at issue.
4.	Respondent $\boxtimes$ was $\square$ was not 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 Department's OIG indicates that the time period they are considering the fraud period is February 1, 2012 to June 30, 2012.
7.	During the alleged fraud period, Respondent was issued \$2524 and entitled to \$0 in $\square$ FIP $\boxtimes$ FAP $\square$ SDA $\square$ CDC $\square$ MA benefits from the State of Michigan.
8.	Respondent 🖂 did 🗌 did not receive an OI in the amount of \$2524 under the 🗌 FIP 🖂 FAP 🔲 SDA 🔲 CDC 🔲 MA program.
9.	During the alleged fraud period, Respondent was issued \$1831.43 and entitled to \$0 in $\square$ FIP $\square$ FAP $\square$ SDA $\square$ CDC $\boxtimes$ MA benefits from the State of Michigan.
10	.The Department $oxtimes$ has $\odots$ has not established that Respondent committed a FAP IPV.
11	.This was Respondent's ⊠ first ☐ second ☐ third FAP IPV.
12	. A notice of hearing was mailed to Respondent at the last known address and $\boxtimes$ was $\square$ was not returned by the US Post Office as undeliverable.

# **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in



#### 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 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 IPV is returned as undeliverable, the hearing cannot proceed with respect to any program other than Food Assistance Program (FAP). BAM 720, p 10. 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.

### Intentional Program Violation

The Department's OIG requests IPV hearings for cases when:

- benefit overissuances 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 \$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. [BEM 720 (August 1, 2012), p 10.]

Suspected IPV means an overissuance (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 720, p 1 (emphasis in original).]

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).

In support of its IPV case against Respondent, the Department alleged that Respondent received Michigan-issued FAP benefits when she was no longer a Michigan FAP resident. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 220 (January 1, 2012), p 1; BEM 212 (April 1, 2012), pp 2-3.

In this case, the Department established that from November 2, 2011 to June 20, 2012, Respondent used her FAP benefits issued by the State of Michigan almost exclusively out of state in Tennessee, other than a one week period in December 2011 and a four-day period in March 2012, when she used her FAP benefits in Michigan. Respondent filed online applications with the Department on February 1, 2012, and May 7, 2012, in which she reported a Michigan address and acknowledged that she was required to report a change of address within ten days. Because Respondent's online applications reporting a Michigan address were submitted to the Department during the period in

which Respondent used her Michigan-issued FAP benefits in Tennessee, the Department presented clear and convincing evidence that Respondent withheld information concerning her move out of state for the purpose of maintaining her FAP program eligibility in the State of Michigan. Thus, the Department has established that Respondent committed an IPV regarding her FAP benefits.

#### Disqualification

A court or hearing decision that finds a client committed an 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 12.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 2009), 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 13.

Because the Department satisfied its burden of establishing that Respondent committed a first IPV of FAP benefits, Respondent is therefore subject to a one year FAP disqualification. BAM 720, p 13.

#### Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6; BAM 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

At the hearing, the Department established that \$2524 in FAP benefits were issued by the State of Michigan to Respondent from February 1, 2012 through June 30, 2012. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

In support of its FAP recoupment case, the Department presented Respondent's FAP transaction history showing her use of FAP benefits issued by the State of Michigan entirely out of state during the period at issue other than a four-day period in March 2012. As discussed above, Respondent was no longer eligible for FAP benefits after she resided outside Michigan for more than 30 days. See BEM 212, pp 2-3. Therefore, the Department has established it is entitled to recoup the \$2524 in FAP benefits it issued to Respondent between February 1, 2012 and June 30, 2012.

# **DECISION AND ORDER**

The Administrative La	aw Judge, based	I upon the above	Findings of I	Fact and 0	Conclusions
of Law, and for the re	asons stated on	the record, cond	cludes that:		

2. Respondent  did did not receive an OI of program benefits in the amount of \$2524 from the following program(s)  FIP  FAP  SDA  CDC  MA.  The Department is ORDERED to  delete the OI and cease any recoupment action. initiate recoupment procedures for the amount of \$2524 in accordance with Department policy. reduce the OI to \$ for the period , in accordance with Department policy.  It is FURTHER ORDERED that Respondent be disqualified from  FIP FAP SDA CDC for a period of 12 months. diffetime.	1.	Respondent 🖂 did 🗌 did not commit a FAP IPV.
delete the OI and cease any recoupment action.  initiate recoupment procedures for the amount of \$2524 in accordance with Department policy.  reduce the OI to \$ for the period , in accordance with Department policy.  It is FURTHER ORDERED that Respondent be disqualified from	2.	
<ul> <li>initiate recoupment procedures for the amount of \$2524 in accordance with Department policy.</li> <li>□ reduce the OI to \$ for the period , in accordance with Department policy.</li> <li>□ It is FURTHER ORDERED that Respondent be disqualified from</li> </ul>	Th	e Department is ORDERED to
	⊠ De	initiate recoupment procedures for the amount of \$2524 in accordance with epartment policy.
☐ FIP ☐ FAP ☐ SDA ☐ CDC for a period of ☐ 12 months. ☐ 24 months. ☐ lifetime.	$\boxtimes$	It is FURTHER ORDERED that Respondent be disqualified from
		☐ FIP ☑ FAP ☐ SDA ☐ CDC for a period of ☐ 12 months. ☐ 24 months. ☐ lifetime.

It is FURTHER ORDERED that the Department's Request for an IPV Hearing with respect to Respondent's MA case is DISMISSED WITHOUT PREJUDICE.

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

Date Signed: <u>10/29/2012</u>

Date Mailed: 10/29/2012

**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

# 201274709/ACE

