

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

IN THE MATTER OF:



Reg. No.: 201275407
Issue No.: 3052
Case No.: [REDACTED]
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 Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on October 18, 2012, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent 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)
 State Disability Assistance (SDA) Child Development and Care (CDC)
 Medical Assistance (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)
 State Disability Assistance (SDA) 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 has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits during the relevant periods at issue.
4. Respondent was 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 August 1, 2011 to May 31, 2012.
7. During the alleged fraud period, Respondent was issued \$3670 and entitled to \$0 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent received an OI in the amount of \$3303 under the FIP FAP SDA CDC MA program.
9. The Department has has not established that Respondent committed an IPV.
10. This was Respondent's first second third IPV.
11. 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 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 the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

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 Mich Admin Code, R 400.3101 through R 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 Mich Admin Code, R 400.3001 through R 400.3015.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

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.

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.]

Intentional Program Violation

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 this case, the Department alleged that Respondent committed an IPV of the FAP program when she used her FAP benefits issued by the State of Michigan in Oklahoma between August 1, 2011 until her FAP case closed on May 31, 2012. An individual must be a Michigan resident to receive FAP benefits. BEM 220 (April 1, 2011). 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 (April 1, 2011 and January 1, 2012), p 1; BEM 212 (April 1, 2012), pp 2-3.

In presenting its case, the Department was able to establish that Respondent received and used Michigan-issued FAP benefits almost exclusively in [REDACTED] from September 2008 through July 2009. From July 2009 to June 2011, Claimant received food assistance benefits issued by the State of [REDACTED]. On June 22, 2012, Respondent submitted an online application for FAP benefits with the State of Michigan. Although the Department did not produce a copy of the application into evidence, the Department credibly testified that clients applying online for Michigan benefits are required to identify a Michigan address and to acknowledge that they are required to report changes in address. The Department showed that, after her application was approved, Respondent used her FAP benefits in Michigan on July 25, 2011, and July 28, 2011 and then used her Michigan-issued FAP benefits exclusively in the State of Oklahoma between July 30, 2011, until her FAP case closed on May 31, 2012, except for a six day period in March 2012 when she used the benefits in Michigan.

Evidence that Respondent used Michigan-issued FAP benefits in [REDACTED] between September 2008 and July 2009, that she received [REDACTED]-issued food benefits between July 2009 and June 2011, and, after applying for Michigan-issued FAP benefits in June 2011, used her Michigan-issued FAP benefits in Michigan only twice and then used those benefits almost exclusively in [REDACTED] was sufficient to establish, by clear and convincing evidence, that Respondent resided in [REDACTED] during the alleged

fraud period and that she withheld information concerning her residency for the purpose of establishing and 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 \$3670 in FAP benefits were issued by the State of Michigan to Respondent from August 1, 2011 through May 31, 2012. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

In support of its FAP case, the Department presented Respondent's FAP transaction history showing her use of FAP benefits issued by the State of Michigan almost exclusively out of state beginning July 30, 2011, and continuing through April 22, 2012. Because Respondent's FAP transaction history did not show that Respondent continued to use her Michigan FAP benefits issued to her in May 2012 out-of-state, the Department agreed to remove the \$367 in FAP benefits issued to her in May 2012 from the recoupment it sought to recover, bringing the recoupment sought to \$3303. Individuals must be Michigan residents in order to receive Michigan-issued FAP benefits (BEM 220, p 1). As discussed above, the evidence established that Respondent was not a Michigan resident at the time of her June 2011 online application and therefore not eligible for FAP benefits. Based on the evidence presented, the Department has

established it is entitled to recoup the \$3303 in FAP benefits it issued to Respondent between August 1, 2011 and April 30, 2012.

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 did not commit an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$3303 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 \$ _____ in accordance with Department policy.
- reduce the OI to \$3303 for the period August 1, 2011, to April 30, 2012, in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

- FIP FAP SDA CDC for a period of
- 12 months. 24 months. lifetime.


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

Date Signed: 10/29/2012

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

201275407/ACE

cc:

