

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-38464
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: May 9, 2012
County: Oakland (63-04)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on May 9, 2012, from Detroit, Michigan. The Department was represented by [REDACTED]

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 March 26, 2012, 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 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 February, 2010-November, 2011.
4. Respondent was aware of the responsibility to report changes in her residence to the Department, based on her signatures on the December 2, 2009, and September 28, 2010, Redetermination Applications.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. Respondent began using FAP FIP MA benefits outside of the State of Michigan beginning in July, 2010.
7. The OIG indicates that the time period they are considering the fraud period is July 1, 2010-November 30, 2011.
8. During the alleged fraud period, Respondent was issued \$11,356 in FAP FIP MA benefits from the State of Michigan.
9. The Department has has not established that Respondent received concurrent benefits and thus 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 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.

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 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 \$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. 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.

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. 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.

Additionally, the Department's theory in this case is that Respondent failed to report a change of address from [REDACTED]

[REDACTED] The Department submitted two items of evidence to support its assertion. The first item is a five-page list of FAP purchases from June, 2010-December, 2011. Based on these records, the Department asserts that Respondent moved to [REDACTED] July 2010.

There are two issues which make the Department's conclusion erroneous. First, assuming that a person lives where they buy food, Respondent was in [REDACTED] for eleven months, then returned to Michigan for three months, then went back to [REDACTED] for four months, then returned again to Michigan. It is found and determined that this does not support a conclusion that the Respondent left Michigan, but that she appears to be traveling back and forth for reasons of her own which may or may not be a change in her permanent residence.

Secondly, the Department's conclusion that Respondent left Michigan in July 2010 based on the FAP purchase records is contradicted by the Department's second document, the LexisNexis Public Records: Comprehensive Person Report. This record states that Respondent lived on [REDACTED] from December 2005-November 2011

but that she also lived on [REDACTED] from March 2010 to the present. Thus, according to the Comprehensive Person Report, Respondent had two residences at the same time. This report states Respondent took residence in [REDACTED] in March 2010, but the Department's FAP purchase records show she was buying food in Michigan for the entire month of June 2010.

In addition, the FAP purchase records submitted by the Department begin in June 2010 when there is a series of Michigan purchases. The Department did not provide records for March, April and May 2010, and the Department did not charge Respondent with IPV for March-June 2010. Based on these observations, it can be presumed that Respondent made only Michigan FAP purchases during all four months.

However, if Respondent moved to [REDACTED] in March, as the Comprehensive Person Report might indicate, it is inconsistent with her presumed record of FAP purchases in Michigan during March-June, 2010. It is found and determined that the Department's evidence is inconsistent and is, therefore, insufficient to support a decision of IPV or of OI in this case.

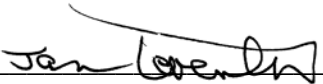
Based on all of the evidence in the record taken as a whole, it is found and determined that the Department failed to meet its burden of proving by clear and convincing evidence that an IPV or an OI occurred in this case. The Department's request for an Order to that effect is DENIED.

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 \$9,651 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 \$ _____ for the period _____, 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.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 15, 2012

Date Mailed: May 15, 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.

JL/pf

cc:

