

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

IN THE MATTER OF:



Reg. No.: 2012 42446
Issue No.: 3052, 1052
Case No.: [REDACTED]
Hearing Date: March 31, 2012
County: Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR CONCURRENT BENEFITS
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 May 16, 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 March 31, 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 September 1, 2010 through March 1, 2011 (FAP) and May 2010 through September 30, 2010 (FIP).
4. On the Assistance Application signed by Respondent on June 1, 2010, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his 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 7/14/10. Exhibit 3.
8. The OIG indicates that the time period they are considering the fraud period is 9/1/10 through 3/13/11 for FAP benefits. Exhibit 1, Page 2.
9. The OIG evidence indicates that the time period they are considering the fraud period is 9/1/10 through 9/30/10 (FIP). Exhibit 1, Page 2.
10. During the alleged fraud period, Respondent was issued \$3683 in FAP and \$650 FIP MA benefits from the State of Michigan.
11. During the alleged fraud period, Respondent was receiving concurrent FAP benefits from the state of Michigan and was receiving FAP benefits in the State of [REDACTED] and was issued \$4120 in FAP FIP MA benefits from the State of [REDACTED] Exhibit 1, page 33-37.
12. The Department has has not established that Respondent received concurrent FAP benefits from both Michigan and Texas and thus committed an IPV.
13. This was Respondent's first second third IPV for FAP benefits.

14. The Respondent did not receive concurrent FIP benefits from Michigan and [REDACTED] but did receive FIP benefits from the state of Michigan for August and September 2010 while no longer living in Michigan. Exhibit 5 page 47.

15. 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 documentary evidence clearly established concurrent receipt of benefits by the Claimant for FAP benefits in Texas and Michigan. The evidence established that the Claimant moved out of state to Texas beginning July 2010 and did not return to Michigan during the period through March 2011. Exhibit 1, pages 38 through 41. The EBT purchase history establishes this fact. There is no evidence to refute the Department's contentions that the Respondent relocated to Texas and continued to use FAP benefits while no longer living in Michigan. The evidence also established that he Claimant received FAP benefits in Texas during the period January 2010 through May 2011. Exhibit 2 pages 33 - 37. The Department also established that

the Claimant used her Michigan EBT card in Texas to purchase food. Exhibit 3 pages 38, 39. Based upon these facts, the Department has established an Intentional Program Violation by the Claimant as regards food assistance. The evidence established that the Claimant applied for FAP in June in Michigan, and a month later was in Texas and was using her Michigan food assistance EBT card in that state from July 2010 through March 2011. Based upon the evidence presented, the Department established an intentional violation by the Claimant and is entitled to recoup \$\$3683 in FAP benefits. The Department also established that Respondent should be disqualified for a 10 year period due to concurrent receipt of FAP benefits in Michigna and Texas.

After the hearing a return envelope addressed to Respondent was received, indicating that the Notice of Hearing and hearing packet was returned as undeliverable. The Department's request for a finding of IPV for FIP benefits received must be dismissed without prejudice BAM 720, page 9 provides:OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. In this case because the correspondence was returned the Intentional Program Violation action for FIP benefits must be Dismissed.

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 with regard to concurrent receipt of FAP benefits.
 2. The Department's action for IPV with regard to FIP benefits is DISMISSED as the Notice and repay agreement was returned as undeliverable.
 3. Respondent did did not receive an OI of program benefits in the amount of \$3683 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 \$3683 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.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 31, 2012

Date Mailed: May 31, 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.

LMF/hw

cc:

