

**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.: [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 February 1, 2012 to June 30, 2012.
7. During the alleged fraud period, Respondent was issued \$2524 and entitled to \$0 in FIP FAP SDA CDC 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 FIP FAP SDA CDC MA benefits from the State of Michigan.
10. The Department has 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 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.

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 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 a FAP IPV.
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. 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: 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

201274709/ACE

cc:

