

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012-76496  
Issue No.: 3055  
Case No.: [REDACTED]  
Hearing Date: January 16, 2013  
County: Wayne (82-57)

**ADMINISTRATIVE LAW JUDGE:** Robert J. Chavez

**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 January 16, 2013, 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

- |  |   |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC)         |
| <input type="checkbox"/> 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

- |  |   |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> 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 period of October 1, 2011, through June 1, 2012.
4. On DHS-1171 signed October 22, 2010, Respondent certified that they understood their duty to report changes and had not given false information.
5. The Department's OIG indicates that the time period they are considering the fraud period is October 1, 2011, through June 1, 2012.
6. During the alleged fraud period, Respondent was issued \$1,800 in  FIP  FAP  SDA  CDC  MA benefits from the State of Michigan.
7. This was Respondent's  first  second  third alleged IPV.
8. 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 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 2000 AACS, Rule 400.3151 through Rule 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 1999 AC, Rule 400.5001 through Rule 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.

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 federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
  - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
  - (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section.

7 CFR 273.16(c)(6).

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, or
  - 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 OI 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.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the FAP program. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

The burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to commit an IPV.

In other words, the Department must prove that the respondent did not simply forget to meet her or his obligations to report but, rather, actively sought to defraud the Department.

Respondent applied for, and received, FAP benefits on October 22, 2010. Respondent's statement of benefits shows that the benefits were used out of state beginning in September 2011. There is no indication that Respondent applied for benefits while intending to live out of state or while living out of state.

Contrary to popular belief, BEM 220, Residency, does not set any particular standard as to when a person is legally residing in another state, nor does it state that the simple act of using food benefits in another state counts as residing in that other state. BEM 220 does not give a maximum time limit that a respondent may leave the state and lose residency in the State of Michigan. The simple act of leaving the state—even for an extended length of time—does not in any way remove a beneficiary's residency status for the purposes of the FAP program. Without evidence to show that Respondent was actually living in another state, the undersigned cannot hold that she was and, as such, must decide that she lawfully received FAP benefits and there is no OI in the case.

However, the Department presented a piece of evidence at the hearing; according to credible testimony from the testifying agent: Respondent admitted to moving to Texas, and furthermore, and far more troubling, admitted to sending her FAP card to a relative in New York so that he could use the card himself. The undersigned declines to make a

determination as to whether this latter transaction is a violation of the FAP program; however, Respondent's admission to a change of residency and failure to report constitutes a violation.

While Respondent did not appear at the hearing, the undersigned believes that the statement in question constitutes admissible hearsay; per Michigan Rules of Evidence Rule 804 b(3), a statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true, is admissible as a hearsay exception.

Additionally, Respondent did not appear to make an objection to the admissibility of the statement.

Therefore, with valid testimony showing that Respondent did, in fact, admit to a change in residency, and regardless of the lack of documentary evidence regarding a change in residency, the undersigned must hold that Respondent changed residency and intentionally failed to inform the Department of this change.

Therefore, as Respondent intentionally left the state without informing the Department, the undersigned holds that there is clear and convincing evidence of an IPV.

Furthermore the undersigned holds that the benefits sought to be recouped in this case, \$1,800, were unlawfully issued to a non-resident, per admission by Respondent and a lack of objection to the Department's calculations. As such, the recoupment requested in this case is affirmed.

### **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 \$1,800 from the following program(s)  FIP  FAP  SDA  CDC  MA.

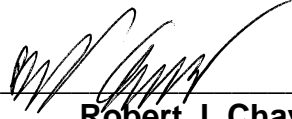
The Department is ORDERED to delete the OI and cease any recoupment action.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,800 in accordance with Department policy.

The Department is ORDERED to 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.



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**Robert J. Chavez**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: January 31, 2013

Date Mailed: January 31, 2013

**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.

RJC/pf

cc:

