

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20136543
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: December 13, 2012
County: Wayne (57)

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 December 13, 2012, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Regulation Agent [REDACTED] observed the hearing.

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 checked="" 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

- 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 October 25, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV through receipt of concurrent benefits.
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 circumstances, including address changes, to the Department.
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, 2010 through January 31, 2012.
7. During the alleged fraud period, the OIG alleges that Respondent was issued \$5884 in FIP FAP SDA CDC MA benefits from the State of Michigan was entitled to \$0 in benefits.
8. During the alleged fraud period, the OIG alleges that Respondent was issued \$984 in FIP FAP SDA CDC MA benefits from the State of Michigan and was entitled to \$0 in benefits.
9. Respondent did did not receive an OI in the amount of \$6868 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV.
11. This was Respondent's first second third alleged IPV under both the FIP and FAP programs.
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.

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). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of her FAP and FIP benefits because she received those benefits issued by the State of Michigan while she was no longer a Michigan resident. To be eligible for benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 1, 2009 and January 1, 2012), p 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p 1. For FIP purposes, a person is a resident if all of the following apply: (1) the person is not receiving assistance from another state, (2) the person is living in Michigan, except for temporary absence, and (3) the person intends to remain in the state permanently or indefinitely. BEM 220, p 1.

The Department's evidence showed that (i) Respondent used her FAP benefits issued by the State of Michigan exclusively in [REDACTED] between January 4, 2010 and August 17, 2010, (ii) reapplied for benefits in Michigan on January 26, 2011, (iii) used her FAP benefits in Michigan for a two week period in February 2011, and then (iv) recommenced use exclusively in [REDACTED] from February 25, 2011 through January 26, 2012, other than a five day period of use in Michigan in March 2011, and a single

transaction in Michigan on April 22, 2011. The Department also presented evidence that Respondent was employed in █████ for █████ between April 2010 and June 2010 and for Burger King between May 2011 and September 2011, during which time period she continued to receive Michigan-issued FAP benefits that she used in █████. Evidence that Respondent used her Michigan-issued FAP benefits in █████ while she was employed in █████ and that she did not report her employment income to the Department was sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information concerning her residency for the purpose of obtaining and maintaining both FAP and FIP benefits issued by the State of Michigan. Thus, the Department established that Respondent committed an IPV of her FAP and FIP benefits.

At the hearing, the Department also alleged that Respondent was receiving concurrent cash benefits and food assistance issued by the State of █████. A recipient of cash assistance or FAP from another state is not eligible for FIP or FAP in Michigan for the same month. BEM 222 (June 1, 2011), pp 1, 2. A client is eligible for cash assistance only in the state where she resides. BEM 222, p 2. The evidence the Department presented to establish concurrent receipt of FIP and FAP benefits by Respondent in Michigan and █████, which consisted of testimony concerning the OIG's contact with an █████ case worker, was not sufficient to establish, by clear and convincing evidence, that Respondent was a recipient of concurrent 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 Department programs by intentionally withholding information for the purpose of obtaining Michigan-issued FIP and FAP benefits, Respondent is subject to a one year disqualification under both programs. Because the evidence was insufficient to establish concurrent receipt of benefits, a ten year disqualification is not applicable. See BAM 720, p 13; BEM 203 (October 1, 2011), p 1.

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 presented benefit summary inquiry showing FAP issuances totaling \$7404 by the Department to Respondent between February 1, 2010 and August 1, 2010 and between January 26, 2011 and October 31, 2011 and FIP issuances totaling \$1722 by the Department to Respondent between January 26, 2011 and October 31, 2011. However, the Department is seeking recoupment of a total of \$6868 for overissuances of the FIP and FAP benefits, \$5884 for FAP and \$984 for FIP.

In support of its FAP OI 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 January 4, 2010. Respondent became ineligible for FAP benefits once her FAP transaction history showed that she was using her Michigan-issued FAP benefits outside Michigan for more than 30 days. See BEM 212, pp 2-3. Therefore, she became ineligible for FAP benefits on February 4, 2010. While the FAP period does not begin until March 2010, the FAP OI amount the Department seeks to recoup does not include the FAP issuance for February 2010. See BAM 715, p 4; BAM 720, p 6; BAM 220 (January 1, 2011), p 4. Thus, the Department is entitled to recoup \$5884 in FAP benefits for FAP issuances to Respondent between February 1, 2010 and January 31, 2012.

Evidence of Respondent's use of her FAP benefits out of state also established that she was not living in Michigan and not eligible for FIP benefits issued by the State of Michigan. BEM 220, p 1. Thus, the Department is entitled to recoup the requested \$984 of FIP benefits issued between February 1, 2010 and January 31, 2012.

Therefore, the Department is entitled to recoup \$6868 in FIP and FAP benefits issued to Respondent within February 1, 2010 and January 31, 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 \$6868 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 \$6868 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.



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

Date Signed: 1/3/2013

Date Mailed: 1/3/2013

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.

ACE/hw

cc:

