

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

IN THE MATTER OF:



Reg. No.: 2013-49757
Issue Nos.: 1052, 3052
Case No.: [REDACTED]
Hearing Date: October 3, 2013
County: Van Buren

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on October 3, 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 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
benefits that the Department is entitled to recoup?

2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? 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 June 4, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report an out-of-state move and continuing to receive Michigan-issued benefits while out of state. .
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 issued by the Department.
4. Respondent was was not aware of the responsibility to report changes, 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 it is considering the fraud period for FAP is July 1, 2010, to December 31, 2010. During this period, Respondent was issued \$3,886 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits.
7. The Department's OIG indicates that the time period it is considering the fraud period for FIP is August 1, 2010, to January 31, 2011. During this period, Respondent was issued \$5,442 in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits.
8. The total OI sought is \$9,328.
9. This was Respondent's first second third alleged FAP IPV.
10. This was Respondent's first second third alleged FIP 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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual

(BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, or
 - the total OI amount is less than \$1000, **and**
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (February 2013), p. 10.

Intentional Program Violation

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 reporting responsibilities.

BAM 700 (July 2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

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); see also 7 CFR 273(e)(6). 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 failed to notify the Department that she no longer resided in Michigan but continued to receive Michigan-issued FAP and FIP benefits while out of state. To be eligible for FAP and FIP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (October 2011 and January 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 he is not receiving assistance from another state; **and** is living in Michigan, except for a temporary absence, **and** intends to remain in the state permanently or indefinitely. BEM 220, p. 1. 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 212 (October 2011), pp. 2-3.

The Department established that from November 6, 2009, through January 11, 2011, Respondent used FAP benefits issued by the State of Michigan almost exclusively out of state in [REDACTED], using them in Michigan only between November 16, 2009, and November 22, 2009, and on August 5, 2010. This evidence was sufficient to establish that Respondent was no longer residing in Michigan. The Department also presented applications for FIP and FAP submitted by Respondent to the Department on July 6, 2010, and November 22, 2010, in which Respondent identified a Michigan address as her residence. Respondent's reporting a Michigan address to the Department while she used the FAP benefits issued by the State of Michigan exclusively in Illinois was sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information concerning her residency for the purpose of maintaining program eligibility. Thus, the Department has established that Respondent committed an IPV of both her FIP and FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (May 2013), 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department established that Respondent committed a FAP IPV and a FIP IPV. Therefore, Respondent is subject to a one-year disqualification from the FAP program and a one-year disqualification from the FIP program.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, 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 (February 2013), pp. 1, 5; BAM 705 (February 2013), p. 5.

In this case, the Department presented a FAP transaction history that established that, other than for the period between November 16, 2009, and November 22, 2009, and on August 6, 2010, Respondent used her Michigan-issued FAP benefits exclusively out of state. Respondent's FAP use out of state established that she did not reside in Michigan. Clients are not eligible for FAP or FIP benefits issued by the State of Michigan if they do not reside in Michigan. BEM 220, p. 1.

Based on the benefit issuance summary presented, the Department established that Respondent was issued \$3,886 in FAP benefits from July 1, 2010, to December 31, 2010, that she was not eligible to receive. The Department also established that she was issued \$5,442 in FIP benefits from August 1, 2010, to January 31, 2011, that she was not eligible to receive. Thus, the Department has established an OI totaling \$9,328 that it is entitled to recover from Respondent.

DECISION AND ORDER

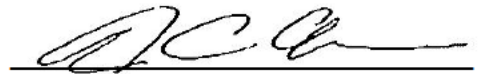
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. Respondent did did not commit an IPV by clear and convincing evidence.

2. Respondent did did not receive an OI of program benefits in the amount of \$9,328 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$9,328 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: October 9, 2013

Date Mailed: October 10, 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/pf

cc:

