

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

IN THE MATTER OF:



Reg. No.: 201359696
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: September 30, 2013
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 September 30, 2013 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED].

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 [REDACTED] 2013, 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 issued by the Department.
4. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2011 through March 31, 2013.
5. During the alleged fraud period, Respondent was issued \$3,200 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
6. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$3,200.
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 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 Bridges implementation, 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, 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, p. 1.

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.

BAM 700 (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.

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,
- the alleged fraud is committed by a state/government employee.

BAM 720 (2013), p. 12.

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

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.

In this case, the Department has established that respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to their FAP eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation 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 their obligations to report, but rather, actively sought to defraud the Department.

Our first question must be whether the respondent was actually living out of state during the time in question. 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 respondent’s residency status for the purposes of the FAP program. However, BEM 220 does require a FAP recipient to be living in the state of Michigan.

The question thus becomes a determination as to whether the respondent was living in the state of ██████████, and therefore was not living in the State of Michigan.

There is no particular case law directly on point with regard to living in the State.

Cervantes v. Farm Bureau, 726 NW 2nd 73 (2006) outlined a several-pronged test to determine if a person is not “living with” another person. These prongs include whether or not the person in question maintains a separate mailing address, maintains separate possessions at the house, has legal documents showing a separate address, maintains a separate bedroom, and relies on any financial support from the other person.

While not precisely dealing with the exact issue at hand, the Administrative Law Judge feels that the case is similar and relevant enough to make a determination as to whether respondent was living in Michigan or, conversely, whether respondent was living in ██████████, at the time of the case closure.

Furthermore, a second case, *Workman v. Detroit Automobile Inter-Ins Exch.*, 404 Mich. 477 NW 2nd 373 (1979), identified four other factors to consider when determining whether a person is domiciled in the same household, including the subjective or declared intent of the person remaining, the formality or informality of the relationship between the person and other household members, whether the place where the person lives is in the same house or within the same cartilage or upon the same premises, and the existence of another place of lodging by the person alleging residence.

The question, therefore, facing the Administrative Law Judge is whether respondent meets the legal definition of living with a person, either domiciled in Michigan or ██████████ and, therefore, can be said to be living within or out of the State.

Several pieces of evidence were presented in the current case, though the Administrative Law Judge attaches no greater weight to any particular piece of evidence. Rather, the Administrative Law Judge looks to the totality of the evidence to make a determination as to respondent’s residential status.

The Department presented evidence that respondent used his FAP benefits in ██████████ from ██████████ 2011 through the date of case closure. This was obtained by looking at the purchasing history for the EBT card associated with respondent’s FAP benefits.

Respondent also submitted evidence in the current case, including medical bills that showed respondent attending medical appointments approximately once every three months in the State of Michigan.

However, the evidence that the undersigned gives the most weight is where respondent presented himself as living. In a conversation with an investigating agent on [REDACTED], 2013, respondent stated that his address was in [REDACTED], and that he had no definite plan to return to Michigan.

Respondent objected to the admission of this conversation into evidence as hearsay. However, the Michigan Rules of Evidence 801(d)(2) state that a statement is not hearsay if:

(2) *Admission by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, except statements made in connection with a guilty plea to a misdemeanor motor vehicle violation or an admission of responsibility for a civil infraction under laws pertaining to motor vehicles. MRE 801(d)(2).

Therefore, respondent's hearsay objection is overruled, and the statement is allowed into the evidence record.

Finally, it should be noted that during the hearing, respondent admitted to sharing his FAP benefits with the person he was domiciled with in [REDACTED] in order to "contribute". While that admission is not at issue in the hearing, it can be used to make a determination as to where the respondent was actually living.

When examining the totality of the evidence in this case to the factors set forth in *Cervantes* and *Workman*, the analysis weighs heavily in favor of a determination that claimant's residence is in [REDACTED].

With regard to the *Workman* case, respondent has declared that he is a resident of [REDACTED]; Respondent submitted no agreement for rent at his previous Michigan address; respondent's living space in [REDACTED] was with a family member and it appears respondent maintained a space while living there; and; respondent had no other established or permanent place of lodging in the State of Michigan.

With regard to the *Cervantes* case, the test there weighs heavily in favor of a determination that respondent changed his residence from Michigan. Specifically, his mailing address changed to [REDACTED], per his own statement; and his bedroom and residence was not maintained in Michigan. Furthermore, respondent, per admission, received financial support from family members in [REDACTED] while living there.

With regard to respondent's medical bills, the bills in question did not show respondent's address, but rather, a P.O. box in [REDACTED] belonging to a different person than the respondent; and were not persuasive in the current case.

The Administrative Law Judge finds it highly persuasive that, of the factors stated in the case law as to how to determine whether a person is living in a certain place, many of the factors weigh in favor of respondent changing his address.

For these reasons, the respondent is held by the Administrative Law Judge to be considered a resident of ██████████ during the time period in question.

However, this change in residency status does not mean that the Department has proven that the respondent intended to defraud the Department with regard to his FAP benefits.

Respondent applied for, and received, FAP benefits on ██████████ 2011. The respondent's statement of benefits shows that the benefits were used out of state beginning in ██████████ 2011. There is no indication that respondent applied for benefits while intending to live out of state, or while believing he was living out of state.

However, it should be noted that the respondent had a redetermination for FAP benefits conducted in ██████████ 2012. On that redetermination, respondent did not notify the Department of a change of address. After considering the testimony and other evidence, the undersigned rules that there is not clear and convincing evidence to show that this was malicious in nature and done with the intent to commit an IPV.

Respondent testified that he believed he was a resident of Michigan during the time in question, regardless of where he was actually living. Given that respondent maintained several ties to the State of Michigan, including medical appointments and insurance, this was not an entirely unreasonable belief, regardless of the determinations of arcane points of case law and the legal parsing of the meanings and definitions of plain language.

At the very most, the undersigned can say that the respondent should have realized the fact that he was living in another state. This is a far cry from clear and convincing evidence of intent to defraud the Department of FAP benefits.

In the current case, all the Department has proven is that respondent did not report. There is no evidence that clearly supports a finding that there was intent to commit an IPV, versus a respondent who, for instance, simply held a different residency definition in his mind. As such, the Administrative Law Judge declines to find an IPV in the current case.

However, this does not mean that there was no overissuance; the Department has shown that respondent was residing in another state during the time period in question and was therefore overissued FAP benefits.

The Department had established, through a demonstration of the timeline and respondent statements in this matter, that respondent became a resident of the state of

██████ in ██████r 2011, when he began exclusively using his FAP benefits in that state.

As such, respondent is ineligible for FAP benefits for the period of time after ██████ 2011, because respondent was no longer living in Michigan.

Respondent received benefits between ██████ 2011 and ██████ 2013. Respondent, as a resident of the state of Georgia during this time, was ineligible for benefits. Respondent received \$3,200 in FAP benefits during this period. As respondent was ineligible for FAP benefits entirely, respondent's overissuance is therefore \$3,200, and should be recouped forthwith.

DECISION AND ORDER

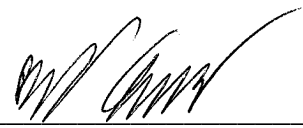
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

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 \$3,200 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 \$3,200 in accordance with Department policy.
- reduce the OI to \$ _____ for the period _____, and initiate recoupment procedures 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.



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

Date Signed: 10/23/2013

Date Mailed: 10/23/2013

2013-59696/RJC

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/hw

cc:

