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

#### IN THE MATTER OF:

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Reg. No.: 201359698

Issue No.:

3052

Case No.: Hearing Date:

September 30, 2013

County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

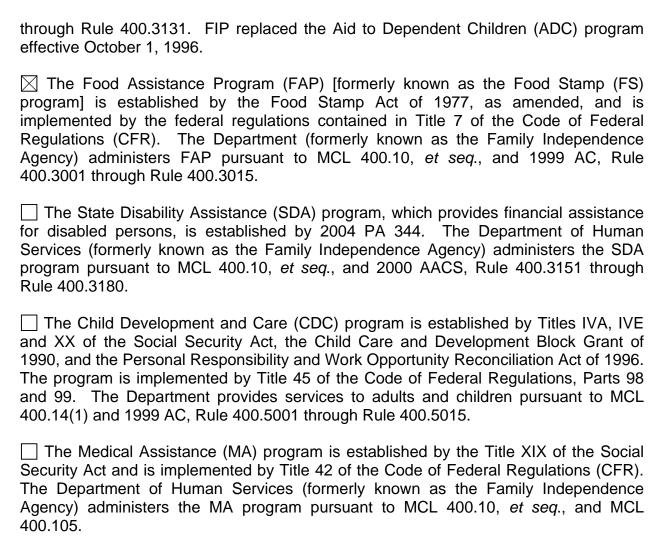
#### **HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

this and part Afte Mich	In the request for a hearing by the Department of Human Services (Department), matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), icularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. In the department was represented by The Department was represented by Office of Inspector General (OIG).	
	Participants on behalf of Respondent included:	
purs	Respondent did not appear at the hearing and it was held in Respondent's absence suant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R .3178(5).	
<u>ISSUES</u>		
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 of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.	
2.	The OIG $\boxtimes$ has $\square$ has not requested that Respondent be disqualified from receiving program benefits.	
3.	Respondent was a recipient of $\ \square$ FIP $\ \boxtimes$ FAP $\ \square$ SDA $\ \square$ CDC $\ \square$ MA benefits issued by the Department.	
4.	The Department's OIG indicates that the time period it is considering the fraud period is 2012 through 2013.	
5.	During the alleged fraud period, Respondent was issued \$2,800 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 $\square$ FIP $\boxtimes$ FAP $\square$ SDA $\square$ CDC $\square$ MA benefits in the amount of \$2,800.	
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 $\square$ was $\boxtimes$ 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 Persona 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		



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. Furthermore, the undersigned is 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.

The Department has proven that in the current case. Respondent filed a mid-certification contact notice for FAP benefits on 2012. The respondent's

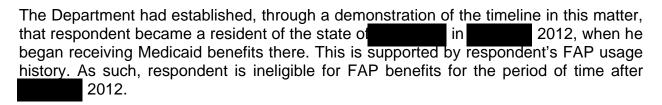
statement of benefits shows that the benefits were used out of state beginning in 2012. Additionally, respondent began receiving Medicaid payment through the state of in 2012. Respondent's application for, and receipt of, benefits is clear and convincing evidence of the intent to reside in that state. Respondent's misrepresentation on the mid-certification contact indicates that respondent attempted to continue benefits while intending to live out of state, or while living out of state.

Clear and convincing evidence requires something more, some piece of evidence that clearly elevates respondent's actions from a mere failure to report a location change into something clearly malicious.

This does not require evidence that proves maliciousness and intent beyond a reasonable doubt, but something more is required nonetheless. In the current case, the Department has proven that respondent misrepresented his living situation while receiving Medicaid benefits from a different state. This is evidence that rises to the clear and convincing level to support a finding that there was intent to commit an IPV. As such, the Administrative Law Judge must find an IPV in the current case.

Furthermore, as respondent was residing in another state during the time period in question, respondent was therefore overissued FAP benefits.

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. Because there is clear and convincing supporting evidence in the form of respondent's benefit history and receipt of Medicaid benefits to show that respondent was actually living in another state, the undersigned must rule that respondent had changed his residency, and as such, must decide that they unlawfully received FAP benefits and there is an overissuance in the current case.



Respondent received benefits between 2012 and 2013. Respondent, as a resident of the state of during this time, was ineligible for benefits. Respondent received \$2,800 in FAP benefits during this period. As respondent was ineligible for FAP benefits entirely, respondent's overissuance is therefore \$2,800, 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 $\boxtimes$ did $\square$ did not commit an IPV by clear and convincing evidence.
2.	Respondent $\boxtimes$ did $\square$ did not receive an OI of program benefits in the amount of \$2,800 from the following program(s) $\square$ FIP $\boxtimes$ FAP $\square$ SDA $\square$ CDC $\square$ MA.
The	Department is ORDERED to  delete the OI and cease any recoupment action.  initiate recoupment procedures for the amount of \$2,800 in accordance with Department policy.  reduce the OI to \$ for the period , and initiate recoupment procedures in accordance with Department policy.
	is FURTHER ORDERED that Respondent be disqualified from FIP  FAP  SDA  CDC for a period of 12 months. 24 months. I lifetime.
	W/ China
	Robert J. Chavez Administrative Law Judge for Maura Corrigan, Director Department of Human Services
Date	e Signed: <u>10/23/2013</u>
Date	e Mailed: <u>10/23/2013</u>
	<u>TICE</u> : The law provides that within 30 days of receipt of the above Decision and er, the Respondent may appeal it to the circuit court for the county in which he/she
RJC	/hw
cc:	