

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

IN THE MATTER OF:

████████████████████
██
██

Reg. No.: 2013 50592
Issue No.: 3052
Case No.: ██████████
Hearing Date: August 6, 2013
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 6, 2013 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

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 7, 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. Respondent was was not aware of the responsibility to report to the Department her moving to Alabama.
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 is February 1, 2012 through October 30, 2012 (FAP) and February 1, 2012 through May 15, 2012 FIP (Cash Assistance) (fraud period).
7. During the fraud period, Respondent was issued \$2,338 in FIP and \$6,340 in 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.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$8728.
9. This was Respondent's first second third alleged IPV.
10. The Claimant signed an Application for Food Assistance and FIP cash assistance dated November 1, 2011. Exhibit 1 pp. 5 through 25. The claimant also provided a redetermination to the Department on January 14, 2012 at which time she did not report a change in address to the state of Alabama. Exhibit 1pp. 29 – 32.
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 (7/1/13), 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 (7/1/13), 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 presented evidence that the claimant completed an application in November 2011 at which time she was provided a booklet advising her of her rights and responsibilities to report changes of address and residency, such as moving out of state. Exhibit 1 PP. 24. Additionally, the claimant completed a redetermination on January 14, 2012, at which time she reported no change in address and instead reported she was living in Pontiac, Michigan. The redetermination specifically requested change in address and housing expenses which was left blank by the claimant. The Department also presented claimant's use of her EBT card. The EBT card usage demonstrated that claimant began using her benefits for FAP beginning January 14, 2012 and continued using her card through October 30, 2012. Exhibit 1 pp. 36 through 39. It was established by the evidence that after the approval of the November 1, 2011 application, the claimant used her benefits in the state of Michigan and then thereafter used her benefits solely in the state of Alabama. Although the claimant had an obligation to report her relocation to Alabama, she did not do so at any time for the period in question. The claimant completed a redetermination and signed on January 14, 2012 which was the date of the first purchase which she made in the state of Alabama. Exhibit 1 pp. 32, (Redetermination) and Exhibit 1 pp. 36 through 39, (EBT card usage). Based upon the evidence presented as regards the Claimant's Food Assistance benefits, the Department has clearly established that claimant failed to report her to move from the state of Michigan and then thereafter on the very date of her

redetermination, misrepresented to the Department that she was still living in Michigan. It is determined that the claimant fraudulently represented to the Department that she was still a resident of Michigan which is not supported by her use of her EBT card.

Further evidence was presented by the Department to demonstrate that the claimant received cash assistance FIP benefits beginning October 1, 2011 through May 31, 2012. Exhibit 1 pp. 33 A, 33 and 34. The Department has only sought to recoup FIP benefits from February 1, 2012 through May 15, 2012. Based upon the receipts of benefits for this time period and the claimant's use of her EBT card exclusively out of state in Alabama during the period in question while she was receiving FIP benefits, the Department has established by clear and convincing evidence that the claimant received fraudulently FIP benefits, in that she failed to report her change in residence in the state of Alabama and misrepresented her circumstances at the time of her redetermination with respect to her address stating that she was still living in Michigan.

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 (7/1/13), 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 has established by clear and convincing evidence that the claimant committed an intentional program violation with respect to both her FIP and FAP benefits, and further establish that this was the claimant's first intentional program violation, therefore it is determined that the claimant must be disqualified for a one-year period for both the Food Assistance and FIP Cash Assistance benefit programs

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, during the time periods in question for the applicable benefits, the Department established through benefit issuance summaries that the claimant received \$6340 in food assistance benefits and \$2388 in FIP Cash Assistance benefits and thus has established its entitlement to a finding of over-issuance for these benefits and the right to seek recoupment. Exhibit 1 PP 30 3A, 3334 and 35.

DECISION AND ORDER

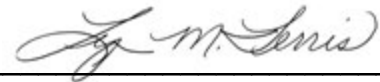
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 \$8678 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 \$8728 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.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 6, 2013

Date Mailed: November 6, 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.

LMF/cl

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