

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

**IN THE MATTER OF:**

██████████  
████████████████████  
████████████████████████████████████████

Reg. No.: 2013-54102  
Issue No.: 3055  
Case No.: ██████████  
Hearing Date: October 17, 2013  
County: Oakland (02)

**ADMINISTRATIVE LAW JUDGE:** Zainab Baydoun

**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 three way telephone hearing was held on October 17, 2013 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent, ██████████.

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 27, 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 and use 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 in household circumstances, such as a change in residence.
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 June 1, 2012 through February 28, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,664 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 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 \$1,664.
9. This was Respondent's  first  second  third alleged IPV.
10. 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 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 (July 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 his FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (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. 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 (November 2012), pp. 2-3.

At the hearing, the Department established that from October 16, 2012 to April 2, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively out of state, in [REDACTED]. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department testified that Respondent was working for a Home Depot in [REDACTED] from April 12, 2012 through August 27, 2012, and that he used his current 1361 OakKnoll Way, Grand Prairie TX address for his employment records, according to a Work Number. Respondent disputed the Department's testimony and stated that while he was employed at Home Depot during this time, he was employed at a Michigan [REDACTED] location and not one in TX. Respondent provided a copy of the W-2 issued for his employment at Home Depot which establishes that Respondent was using a MI address for his employment records and not a [REDACTED] address, as indicated by the Department. (Exhibit A). The FAP transaction history presented by the Department is also consistent with Respondent's testimony. During the period of April 2012 to August 2012, at the time the Department believed Respondent to be employed and living in TX, Respondent's FAP benefits were used exclusively in Michigan.

Additionally, the Department stated that on January 19, 2013, during the alleged fraud period, Respondent completed an online application for FAP and did not report his relocation to TX. Although Respondent confirmed that he completed an online application for FAP benefits in January 2013, he indicated on the application that he

was homeless and listed a MI mailing address. Respondent further testified that he did travel to TX to look for work but maintained that he would be returning to MI if he could not find permanent employment.

Based on the foregoing, the Department did not present sufficient evidence to establish Respondent's intent other than Respondent's out-of-state use. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of 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 has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

### **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.

At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from October 16, 2012 to April 2, 2013.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. Respondent's FAP use out of state established that he did not reside in Michigan. Thus, he was was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits.

Under Department policy, the calculation of the first month of the OI requires that the Department apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 6.

In this case, the Department incorrectly determined the alleged OI period to be June 1, 2012 to February 28, 2013, based on the belief that Respondent moved to [REDACTED] in April 2012 and began working there. As discussed above, the evidence presented does not establish that Respondent was living and working in [REDACTED] in April 2012. Therefore, beginning the OI period on June 1, 2012 is not in accordance with Department policy.

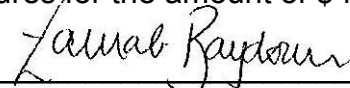
Applying the standards found in BAM 720 and in consideration of out-of-state use that began October 16, 2012, the OI period begins in December 2012. In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from December 2012 through February 2013 totaling \$ [REDACTED] 0 . Thus, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent between December 1, 2012, and February 28, 2013.

### **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 [REDACTED].00 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$464 in accordance with Department policy.



**Zainab Baydoun**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: November 15, 2013

Date Mailed: November 15, 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.

ZB/tm

cc: [REDACTED]  
[REDACTED]  
[REDACTED]