

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

IN THE MATTER OF:

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

Reg. No.: 2013-54774
Issue No(s): 2006;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 July 1, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IP by failing to report an out of state move and continuing to receive and use Michigan issued FAP and MA 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 FAP 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 April 1, 2012 through June 30, 2013 (fraud period).
7. The Department alleges that Respondent received an OI in FAP MA benefits in the amount of [REDACTED].00 for FAP and \$1[REDACTED] for MA.
8. This was Respondent's first second third alleged IPV.
9. 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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 her FAP and MA benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP and MA benefits while out of state. To be eligible for FAP and MA benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2012 and March 2013), p. 1. For MA purposes, an individual is a Michigan resident if living in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely. BEM 220, pp. 2-3. 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 April 1, 2012 to May 13, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively out of state in Florida, with the exception of only three transactions during that period made in Michigan. The Department testified that a collateral contact was made with a person living at the last Michigan address on file for Respondent who indicated that she had been residing at that address since June 2012 and that she did not know Respondent. The Department further testified that in June 2012, Respondent submitted an application for benefits listing a Michigan address even though she had already taken up permanent residence in Florida.

Respondent testified that in June 2012, she moved from the Royal Oak home the Department had on file and moved in with a relative in West Bloomfield and that she completed a change report which was submitted to the Department. Respondent stated that she had family living in Florida and that she went to visit them a few times a month and used her FAP benefits while visiting. Respondent further stated that she returned to Michigan every three weeks while she was undergoing chemotherapy treatment. Respondent credibly testified that she was informed by her Department case worker that she could use her FAP benefits in any state as long as she was not out of Michigan

for 30 consecutive days. Respondent confirmed that she is currently living in Florida and that she made Florida her permanent residence in August 2013.

While the Department did provide evidence that Respondent used her Michigan issued FAP benefits out of state, 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. The Department did not present any evidence to establish Respondent's intent other than Respondent's out-of-state use. In addition, after further review, the transaction summary presented by the Department is consistent with Respondent's testimony, as it establishes that Respondent made purchases in Florida for only a few days out of each month and that for several weeks, no purchases were made.

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 and MA eligibility, the Department has failed to establish that Respondent committed an IPV of FAP and MA 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.

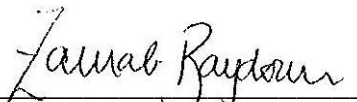
In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP and MA benefits. Therefore, the Department is not entitled to recoup any amount as it has not been established that Respondent received more benefits than she was entitled to receive.

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 not commit an IPV by clear and convincing evidence.
2. Respondent did not receive an OI of program benefits in the amount of [REDACTED] for FAP and \$1[REDACTED] for MA from the following program(s): FAP MA.

The Department is ORDERED to delete the OI and cease any recoupment action.
 delete the OI and cease any recoupment action.



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

Date Signed: November 14, 2013

Date Mailed: November 14, 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]