

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

**IN THE MATTER OF:**

██████████  
██████████  
██████████

Reg. No.: 2013-66014  
Issue No.: 3052  
Case No.: ██████████  
Hearing Date: October 28, 2013  
County: Wayne (82-35)

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**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 October 28, 2013 from Detroit, Michigan. The Department was represented by ██████████.

Participants on behalf of Respondent included: .

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 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 September 3, 2013, to establish (1) an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV by receiving Michigan-issued FAP benefits without Michigan residency and (2) an OI of CDC benefits by Respondent as a result of Respondent receiving CDC benefits he was not eligible to receive based on lack of residency.
2. The OIG  has  has not requested that Respondent be disqualified from receiving FAP 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 any changes in circumstances, including change of address.
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 they are considering the fraud period is March 1, 2011, through July 31, 2011, with respect to the FAP benefits and February 26, 2011, through February 12, 2012, with respect to the CDC benefits.
7. From March 1, 2011, through July 31, 2011, the Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$4,384.
8. From February 26, 2011, through February 12, 2012, the Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$15,049.48.
9. This was Respondent's  first  second  third alleged FAP 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 (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 Mich Admin Code, R 400.3001 through R 400.3015.

At the hearing, the Department clarified that it was pursuing an IPV and an OI with respect to the FAP benefits it alleges Respondent improperly received between March 1, 2011, and July 31, 2011, while he was no longer a Michigan resident. The Department also sought to recoup an OI of CDC benefits issued to Respondent between February 26, 2011, and February 11, 2012, while he and his children were out of state.

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 (February 2013), p. 12.

### **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). 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 2011 and April 2011), p. 1. 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 (September 2010), p. 2.

The Department established that from February 13, 2011, through July 17, 2011, 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 during that period, 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 case, the Department presented a number of documents concerning Respondent's CDC and FAP cases. Most of the documents were submitted in 2010 and provide no evidence concerning Respondent's activities or intent in 2011, during the alleged FAP fraud period. Respondent also submitted a redetermination to the

Department on January 31, 2011, identifying a Michigan address. However, because Respondent's out-of-state use began on February 13, 2011, the January 31, 2011, redetermination does not establish that Respondent misrepresented his residency in order to maintain FAP benefits. 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 an 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. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (February 2013), pp. 1, 5; BAM 705 (February 2013), p. 5.

In this case, the Department sought to establish an OI of FAP benefits for the period between March 1, 2011, and July 31, 2011, and an OI of CDC benefits for the period between February 26, 2011, and February 11, 2012, alleging that Respondent was not eligible for benefits because he was not a Michigan resident. Clients are not eligible for FAP or CDC benefits if they do not reside in Michigan. BEM 220, p. 1. 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.

### **FAP OI**

In support of its case that Respondent was not a resident and not eligible for FAP benefits, the Department relied on the FAP transaction history, which showed that Respondent began using Michigan-issued FAP benefits out of state on February 13, 2011, and this out-of-state use continued through July 17, 2011.

Respondent's FAP use out of state established that he did not reside in Michigan. Thus, he was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits.

In this case, the Department alleges that Respondent was overissued \$4,384 in FAP benefits for the period between March 1, 2011, and July 31, 2011, and presented a benefit summary inquiry showing the monthly benefits during this period. Under Department policy, the calculation of the first month of the OI period requires that the Department allow time for the 10-day client reporting period, the processing period per BAM 220, and the applicable negative action suspense period. BAM 720, p. 6; BAM 715, p. 4. Based on Department policy and in consideration of out-of-state use that began February 13, 2011, the Department properly determined that the OI period began March 1, 2011, the month after the evidence established that Respondent had left the state. See BAM 720, p. 6; BAM 715, p. 4; BAM 220 (January 2011), p. 3. Thus, the Department is entitled to recoup \$4,384 of FAP benefits it issued to Respondent between March 2011 and July 2011.

#### **CDC OI**

The Department alleged an OI of CDC benefits to Respondent between February 26, 2011, and February 11, 2012 totaling \$15,049.48. It is noted that, although the Department presented evidence showing that Respondent was no longer employed [REDACTED] as of February 2011, the Department relied on Respondent's lack of residency, not lack of need, to support its case for an OI of CDC benefits.

As discussed above, Respondent's FAP transaction history showed out-of-state use beginning February 13, 2011. Under Department policy, the calculation of the first month of the OI period requires that the Department allow time for the 10-day client reporting period, the processing period per BAM 220, and the applicable negative action suspense period. BAM 720, p. 6; BAM 715, p. 4. The OI period for CDC benefits, after accounting for the client reporting period, the full standard of promptness for change processing, and the full negative action suspense period, begins with the pay period beginning March 27, 2011.

The CDC OI period ends the pay period before the benefit is corrected. BAM 715, p. 4. In this case, the Department is seeking an OI for CDC benefits issued through February 11, 2012. As discussed above, the Department has established that Respondent was not a Michigan resident through July 31, 2011. However, Respondent's FAP transaction history after July 31, 2011, shows that Respondent used his Michigan-issued FAP benefits in both Michigan and [REDACTED]. After using his FAP benefits in [REDACTED] between February 13, 2011, and July 17, 2011, he used his FAP benefits in Michigan from August 18, 2011, to September 3, 2011. From September 4, 2011, to September 25, 2011, he used them in [REDACTED], and from October 2, 2011, to October 12, 2011, he used them in Michigan. His case appears to have closed and then in March 2012, he

received a FAP issuance of \$438. He spent part of these benefits in Michigan on March 27 and March 28, 2012, and the remaining \$104 balance was used in [REDACTED] between June 15, 2012, and July 10, 2012.

This evidence does not support the Department's position that Respondent continued to lack Michigan residency through February 2012. Because the evidence establishes Respondent's lack of Michigan residency for CDC purposes between March 27, 2011, and July 31, 2011, the Department is eligible to recoup only the \$6,391.62 in CDC benefits issued to Respondent during that period.

Based on \$4,384 in overissued FAP benefits and \$6,391.62 in overissued CDC benefits, the Department is entitled to collect a total of \$10,775.62 in overissued benefits from Respondent.

### **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 a FAP IPV.
2. Respondent  did  did not receive an OI of program benefits in the amount of \$4,384 from the following program(s)  FIP  FAP  SDA  CDC  MA.
3. Respondent  did  did not receive an OI of program benefits in the amount of \$6,391.62 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to reduce the CDC OI to \$6,391.62, and initiate recoupment procedures for the CDC OI and the \$4,384 FAP OI in accordance with Department policy.



**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: November 18, 2013

Date Mailed: November 18, 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.

2013-66014/ACE

ACE/pf

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]