

1. The Department's OIG filed a hearing request on April 25, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent applied for FAP benefits on August 21, 2011. (Exhibit 1, p.17)
5. Respondent used her Bridge card exclusively in the [REDACTED] from March 19, 2012 through March 3, 2013. ("Bridge card usage period") (Exhibit 1, pp. 31-33)
6. Respondent travelled back and forth between [REDACTED] throughout the Bridge card usage period.
7. Respondent's mother resided in [REDACTED] the Bridge card usage period.
8. Respondent's daughter resided in [REDACTED] during the Bridge card usage period.
9. During the Bridge card usage period, Respondent maintained her Michigan's driver's license, retained a Michigan dentist, maintained automobile insurance in Michigan, and received utility billings and bank statements in Michigan. (Exhibit A)

CONCLUSIONS OF LAW

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, 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, 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, Respondent used her Bridge card exclusively in the [REDACTED] from March 19, 2012 through March 3, 2013. ("Bridge card usage") (Exhibit 1, pp. 31-33) Respondent travelled back and forth between Michigan and New York throughout the Bridge card usage period. Respondent's mother resided in [REDACTED] during the Bridge card usage period. Respondent's daughter resided in [REDACTED] during the Bridge card usage period. Finally, During the Bridge card usage period, Respondent maintained her Michigan's driver's license, retained a Michigan dentist, maintained automobile insurance in Michigan, and received utility billings and bank statements in Michigan. (Exhibit A)

Respondent testified credibly at the hearing that during the time she used her Bridge card exclusively in ██████████, she was visiting her mother who was ill and was assisting her mother. Respondent testified that she travelled back and forth between ██████████ ██████████, staying at her mother's home in ██████████ and her friends' homes and her daughter's home in ██████████. Respondent's witness testified that Respondent stayed with her and that she provided meals for Respondent during her stay in Michigan. A review of the card usage shows periods of time when Respondent could have been in Michigan. (Exhibit 1, pp. 31-33)

Based on the above discussion, it is found that the Department has not proven by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

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, 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 not proven by clear and convincing evidence that Respondent committed an IPV, so Respondent is not disqualified from receiving program benefits.

Overissuance

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

BEM 220 instructs that to be eligible for assistance in Michigan, a person must be a Michigan resident. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. (It is noted that the Department cited BEM 212 regarding temporary absences, but BEM 212 addresses who must be included in FAP groups; it does not address residency.)

In this case, Respondent sufficiently accounted for her use of her Bridge card in ██████████ ██████████ maintaining residency in Michigan. The documents presented by Respondent (Exhibit A) and the testimony of Respondent and her witness were

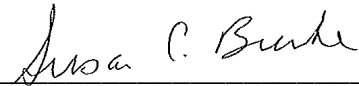
persuasive in showing that Respondent continued to reside in Michigan during the time she used her Bridge card exclusively in [REDACTED]

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.

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



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 2, 2013

Date Mailed: December 2, 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.

SCB/tm

cc| [REDACTED]
[REDACTED]
[REDACTED]