

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013 11696
Issue No.: 3052; 2052
Case No.: [REDACTED]
Hearing Date: February 19, 2013
County: Oakland DHS (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on February 19, 2013, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: the Claimant Russell Mosley.

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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) Food Assistance Program (FAP)
 State Disability Assistance (SDA) 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) Food Assistance Program (FAP)
 State Disability Assistance (SDA) 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 November 1, 2012 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 FAP program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits during the relevant periods at issue.
4. Respondent was was not aware of the responsibility to report changes 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 they are considering the fraud period is September 1, 2011 to May 31, 2012 for the FAP program, and September 1, 2011 to May 31, 2012 for the MA program.
7. During the alleged fraud period, the Department alleges Respondent was issued \$771 and entitled to \$0 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. During the alleged fraud period, the Department alleges Respondent was issued \$1622 and entitled to \$0 in FIP FAP SDA CDC MA benefits from the State of Michigan.
9. Respondent did did not receive an OI in the amount of \$771 under the FIP FAP SDA CDC MA program.
10. Respondent did did not receive an OI in the amount of \$1622.06 under the FIP FAP SDA CDC MA program.
11. The Department has has not established that Respondent committed a FAP IPV.
12. This was Respondent's first second third alleged IPV.
13. 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), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor,
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and

- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee. [BEM 720 (August 1, 2012), p 10.]

Intentional Program Violation

Suspected IPV means an overissuance (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 their reporting responsibilities. [BAM 720, p 1 (emphasis in original).]

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.

The Department alleges that Respondent committed an IPV of the FAP program because he failed to report that he was no longer a Michigan resident. An individual must be a Michigan resident to receive Michigan-issued FAP benefits. BEM 220 (January 1, 2012), 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 220, p 1; BEM 212 (April 1, 2012), pp 2-3.

In this case, the Department established that from July 29, 2011 through May 13, 2012, Respondent used his FAP benefits issued by the State of Michigan exclusively out of state, primarily in Texas. While this evidence was sufficient to establish that Respondent was no longer a Michigan resident, 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 IPV case, the Department presented the application Respondent signed on October 6, 2010, in which Respondent reported a Michigan address and acknowledged that he was required to report a change of address within ten days. However, this document was signed prior to the alleged fraud period, while Respondent was using his FAP benefits in Michigan, and therefore does not support any intent to defraud. The Department pointed out that Respondent acknowledged that he was required to report a change of address when he signed the application and Respondent's use of his Michigan FAP benefits out of state showed that he had a new address he failed to report. However, Respondent's failure to report a change in address is not necessarily a change a client would recognize as one which would affect food benefits, unlike a change in income or a change in group size; Respondent's failure to report a change of address may be more of an oversight rather than evidence that he intentionally withheld or misrepresented his address for the purpose of defrauding the State. The Department presented no evidence that Respondent sought concurrent food assistance benefits while receiving Michigan-issued FAP benefits or that he filed an application or redetermination in Michigan asserting a Michigan address during the period he used his Michigan-issued FAP benefits out of state, actions which would be indicative of an intent to defraud. Additionally the Claimant's FAP benefits were reduced from \$200 to \$53 per month beginning October 2011 and continued at that rate. No explanation was given as to the reason for the reduction. The Claimant also testified that it was in October that he spoke with his then-caseworker to advise that he was going to remain in Texas. In the absence of any evidence that Respondent intentionally withheld or misrepresented information concerning a move out of state for the purpose of maintaining or preventing reduction of FAP benefits, the Department has failed to present clear and convincing evidence that Respondent committed an IPV of his FAP benefits. However, because the Claimant admitted he received the FAP benefits the Department did establish an overissuance of FAP benefits.

As regards the Medical Assistance issue and whether the Claimant received an overissuance, the Claimant credibly testified that he called his caseworker several times in October 2011 to advise her that he intended to stay in Texas. The claimant's medical assistance closed in November. Although the Department stated the reason for closure was a failure to return forms, no documentary evidence of the reason for closure was provided at the hearing. The Department currently is seeking a return of premium that it advanced to pay for Claimant's Medicaid. The Claimant indicated that his Medical Assistance could not be used in Texas. Under these circumstances it does not appear that the Claimant has received an overissuance of the medical assistance premiums as he did not receive a benefits and there was no client error established.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 2009), 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 concurrent receipt of benefits. BAM 720, p 13.

Because the Department failed to satisfy its burden of establishing that Respondent committed an IPV of FAP benefits, Respondent is not subject to a FAP disqualification. BAM 720, p 13.

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6; BAM 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

At the hearing, the Department established that the State of Michigan issued \$771 in FAP benefits to Respondent from September 1, 2011 through May 31, 2012 and further that the Claimant agreed that he received the benefits. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

In support of its FAP case, the Department presented Respondent's FAP transaction history showing his use of FAP benefits issued by the State of Michigan exclusively out of state during the period at issue. As discussed above, Respondent was no longer eligible for FAP benefits after he resided outside Michigan for more than 30 days. See BEM 212, pp 2-3. Therefore, the Department has established it is entitled to recoup the \$771 in FAP benefits it issued to Respondent between September 1, 2011 and May 31, 2012.

The Department also sought to recoup an MA overissuance. The Department may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710 (October 1, 2009), p 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700 (December 1, 2011), p 5.

The Department established that the State of Michigan issued \$1116.40 in MA premium reimbursement, from September 1, 2011 through November 30, 2011. The Department alleges that Respondent was eligible for \$0 in MA benefits during this period. Because Respondent credibly testified that he advised the Department in October 2011 that he was out of state, left several messages and shortly thereafter the Claimant's MA case closed, coupled with the fact that he did not and could not use the benefits, the Department is not entitled to recoup the MA benefits. Thus, the Department was not entitled to recoup the \$1622.06 in MA benefits it issued on Respondent's behalf.

Therefore, the Department is entitled to recoup from Respondent the \$771 in overissued FAP and \$0 MA benefits.

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 \$771 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 \$1622.06 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 \$771.00 in accordance with Department policy.
- reduce the OI to \$ _____ for the period _____, in accordance with Department policy.



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

Date Signed: March 26, 2013

Date Mailed: March 26, 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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