

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-15697
Issue Nos.: 3052,4060
Case No.: [REDACTED]
Hearing Date: January 23, 2013
County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR CONCURRENT BENEFITS
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 January 23, 2013, from Detroit, Michigan. The Department was represented by [REDACTED]

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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

- Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (MA)

benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV) and receive concurrent FAP benefits?

3. Should Respondent be disqualified from receiving

- Family Independence Program (FIP) Food Assistance Program (FAP)

4. Did Respondent receive an OI of Medical Assistance (MA) benefits?

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 December 6, 2012, to establish an OI of FAP benefits and an IPV by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The Department also seeks a recoupment of MA benefits it alleges Respondent was not entitled to receive as she was not living in Michigan when receiving benefits.
3. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
4. Respondent was a recipient of FAP FIP MA benefits during the period of April 1, 2008, through October 31, 2009.
5. On the Assistance Application signed by Respondent on June 1, 2010, Respondent reported that she intended to stay in Michigan. .
6. Respondent was aware of the responsibility to report changes in her residence to the Department.
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. The Department has alleged that Respondent began using FAP FIP MA benefits outside of the State of Michigan beginning in April 2008. Exhibit 1, Item 4.
9. The OIG indicates that the time period they are considering the fraud period is April 1, 2008, through October 31, 2009. Exhibit 1, p. 2.
10. This was Respondent's first second third IPV for FAP benefits.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 1999 AC, Rule 400.3101 through Rule 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 1999 AC, Rule 400.3001 through Rule 400.3015.

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.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700.

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 their reporting responsibilities.

IPV is suspected when there is 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.

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

- benefit overissuance 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.

A court or hearing decision that finds a client committed 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.

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. 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.

Additionally, in this case, the Department has alleged that Respondent received FAP and MA benefits concurrently from the States of Michigan and Wisconsin. A thorough review of the evidence provided by the Department did not establish concurrent receipt of FAP benefits from Michigan and Wisconsin. A review of the proofs offered to establish Respondent's Wisconsin residence was insufficient (lexis/nexus) as it only showed an address and two dates associated with the address in Wisconsin. The Department did not provide a summary to establish that Respondent used her Bridge card in Wisconsin, which would also have established use of benefits outside of Michigan.

The correspondence by email provided from the State of Wisconsin did not establish the benefit period that Respondent received FAP benefits, merely established that Respondent had an open FAP case, but never established that FAP was received during a particular time period or throughout the alleged fraud period. Unfortunately, the correspondence from the State of Wisconsin falls short. One such email dated 11/23/10, after the fraud period, only states Claimant is still receiving FAP for herself and children and does not indicate the time period benefits were received. Exhibit 1, p. 28. Another email dated 10/08/10, after the fraud period, indicates that Respondent and Respondent's spouse have open FAP and MA cases in Wisconsin. The letter states "but benefits have been received for Marem dating back to 4/08" and continues, "I would like the local agency to confirm the case with you." Exhibit 1, p. 27. The evidence again does not establish that Respondent received benefits and only infers that benefits were received back to April 2008 for a child but demonstrating no specific time period when benefits were received. At no time does the correspondence simply indicate that Respondent and/or her child and/or spouse received FAP and MA benefits

from April 2008 through October, 31, 2009, in Wisconsin. Lastly, an email from the OIG to Wisconsin in November 2010, after the fraud period, noted that she did not receive any payment histories for the April 2008 through October 2009 period Respondent was allegedly receiving FAP and MA in Michigan and Wisconsin.

The last evidence presented to support concurrent receipt of FAP and MA benefits in Wisconsin is the Paris Active FAP Duplicate Assistance Fraud Referral, which does not establish concurrent receipt of benefits as it clearly states "the (actual) alleged fraud period needs to be determined via contact with the other state." Exhibit 1, p. 27.

Based on the foregoing, the Department did not establish by clear and convincing evidence that Respondent did receive concurrent benefits from Michigan and Wisconsin and, thus, did not establish an IPV. Additionally, due to the lack of proofs and failure to establish that Respondent was out of state living in Wisconsin during the alleged period of April 2008 through October 31, 2009, the Department has not established that it is entitled to a finding of OI or recoupment.

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 an IPV with regard to concurrent receipt of FAP benefits.
2. Respondent did did not receive an OI of program benefits in the amount of \$7,425 (FAP) and \$22,435 (MA)

The Department is ORDERED to delete the OI for both FAP and MA and cease any recoupment action.



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

Date Signed: March 26, 2013

Date Mailed: March 27, 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.

2013-15697/LMF

LMF/pf

cc:

