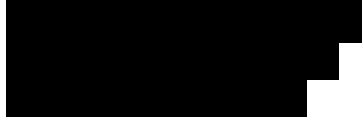


**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**



Reg. No.: 2013-68100  
Issue No(s): 3005  
Case No.:   
Hearing Date: November 25, 2013  
County: Iona

**ADMINISTRATIVE LAW JUDGE:** Dale Malewska

**HEARING DECISION FOR CONCURRENT BENEFITS  
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 Regulations, 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 November 25, 2013 from Lansing, Michigan. The Department was represented by of the Office of Inspector General (OIG).

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)     Food Assistance Program (FAP)  
 Medical Assistance Program (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)     Food Assistance Program (FAP)

**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 11, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG  has  has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of  FAP  FIP  MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on July 11, 2012, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using  FAP  FIP  MA benefits outside of the State of Michigan beginning in August of 2012.
8. The OIG indicates that the time period they are considering the fraud period is October 1, 2012 through March 31, 2013.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in  FAP  FIP  MA benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued  FAP  FIP  MA benefits from the State of [REDACTED]
11. This was Respondent's  first  second  third alleged IPV.
12. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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 \$ [REDACTED] or more, or
  - the total OI amount is less than \$ [REDACTED] 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 (7-1-2013), 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 (7-1-2013), p. 7; 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, page 1; 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.

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In this case, the Department established that the Respondent was aware of her responsibility to timely and accurately reports any changes in her circumstances with regard to residency. Policy requires that the client report any change in circumstance that will affect eligibility or benefit amount within 10 (ten) days. BAM 105. The Respondent's electronic signature on her assistance application [Exhibit #1(sub A), page 22] clearly shows that she was aware that fraudulent participation in FAP could result in criminal, civil or administrative claims.

The record also contained [at pages 41 – 43] a convincing Electronic Benefit Transaction (EBT) history showing [REDACTED]-based FAP purchases - utilizing her Michigan issued EBT card for a time period of more than a month in contravention to BEM 220. There was no demonstrated reciprocal use in Michigan nor was there any evidence showing any report to the Department of either the move or any significant change in circumstance within 10-days as required according to policy.

The OIG testified that the Claimant had no apparent mental illness or physical incapacity limiting her ability to understand or fulfill her reporting requirements.

**Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 14. 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. 15.

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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7-1-2013), 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. 17.

In this case, the record demonstrated that the Respondent is guilty of her first FAP IPV which carries a 12-month disqualification.

**Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (July 2013), p. 1.

In this case, the Respondent received \$ [REDACTED] in FAP funds for which the Respondent had zero eligibility [Exhibit #1 (sub D) p. 45]

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

The Department is ORDERED to  initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that  Respondent be disqualified from FIP for  
 12 months.  24 months.  lifetime.

/s/  
Dale Malewska  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 1/10/14

Date Mailed: 1/10/14

**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.

DM/tb

cc:

