

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

IN THE MATTER OF:



Reg. No.: 2014-3471
Issue No(s): 3005
Case No.:
Hearing Date: December 17, 2013
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Dale Malewska

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 December 17, 2013 from Lansing, Michigan. The Department was represented by , Regulation Agent 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) 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, by clear and convincing evidence, 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 October 7, 2013, 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 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 significant changes to the Department within 10 days – including residency.
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 it is considering the fraud period is February 1, 2012 through July 31, 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits by the State of Michigan.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$ [REDACTED]
9. This was Respondent's first second third alleged 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 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking Ols 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 01 amount for the FIP, SDA, CDC, MA and FAP programs is \$ [REDACTED] or more, or
 - the total 01 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 (7-1-13), p. 12.

Intentional Program Violation

Suspected IPV means an 01 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 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; 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 J18.01.

In this case, the OIG alleged that the Respondent intentionally failed to report a change in residency resulting in improper FAP benefit receipt. To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (7-1-2013)

Revoking or maintaining residency does not always coincide with simply leaving the state, however. The Department has no known policies preventing people from traveling outside of Michigan, though there is a DHS policy concerning

the duration a person can be absent from a household before the person is considered out of the household. FAP benefit group composition policy states that clients absent from a home for longer than 30-days are considered only temporarily absent if their location is known, the person lived with the group before an absence, there is a definite plan for return, the absence is expected to last 30-days or less - unless hospitalized. [BEM212 (10-1-2013), at page 3].

On review, the ALJ finds this 30-day period to be a reasonable starting point from which to gauge Michigan residency – absent lawful excuse.

Supporting the OIG's presentation is credible evidence showing almost exclusive¹ FAP EBT card usage out of state [REDACTED].] beginning on December 18, 2011 and running through August 15, 2012. While it is possible that Respondent maintained a stealthy Michigan residency for those months by food purchases or other device – it is unlikely and unproven as the Respondent failed to appear and defend her status. Her brief letter post marked from Washington D.C., [but with a [REDACTED]] simply proclaimed “legal residency” in Michigan without explanation or supporting evidence. And, the letter was not signed.

On review, the Administrative Law Judge gave this particular exemplar of evidence little weight in support of the non-appearing Respondent. See Department's Exhibit #1, at page 44.

The differential grows even wider when it is considered that the Respondent established a food stamp account in her new host state, Maryland, effective September 11, 2012. Department's Exhibit #1, at pp. 42, 43. Furthermore, the totality of the evidence in consideration of the simple distance factor between [REDACTED] is clear and firm evidence supporting a finding of lost Michigan residency for the Respondent. [See Department's Exhibit #1 – throughout]

Based on the evidence, Respondent is found to not be a Michigan resident as of February 1, 2012. However, this finding alone does not prove that an IPV was committed.

The OIG correctly assumed that Respondent intentionally failed to report a change in residency to continue receiving FAP benefits from Michigan. The Respondent clearly acknowledged her responsibility to report significant changes within 10-days at the conclusion of her DHS 1171 electronic application.

The OIG's best evidence, I find, was the in-district U.S. post mark on the “Respondent's letter” and the fact that she established a food stamp account in

¹Except for her cross borderland in-district visits to [REDACTED] [REDACTED] [REDACTED].

██████████ on September 11, 2012. Departments Exhibit #1, at pp. 42-44

After attesting in her application that her intention was to “remain in Michigan” the Respondent’s future conduct was suspect and aggravated by her non-appearance for hearing today where she had the opportunity to present identification with a valid address, legal evidence of residency, mortgage or relevant utility billings or to produce witnesses familiar with her “Michigan residency.” [Department’s Exhibit #1 at page 15] See *also*, BEM 220.

The requirement to report change to the Department is real and the Respondent did not appear for hearing to produce evidence or testimony that she complied with any State of Michigan regulation. Obviously, her non-appearance helped to bolster the Department's establishment of clear and convincing proof.

The Respondent had a motive to fail to report - that of obtaining free money without host-state responsibility. There was no lawful excuse established for her absence from Michigan.

Based on the presented evidence, the OIG established that Respondent intentionally failed to report a change in residency. Accordingly, it is found that the Respondent committed an IPV.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. In this case, the record also demonstrates that the Respondent received an OI of FAP in the amount of \$██████████ for the time period referenced above. BAM 700 (7-1-2013)

The OIG argued that FAP benefits were over-issued to Respondent over the period of February 1, 2012 through July 31, 2012. The loss of Michigan residency initiated on February 1, 2012. The FAP benefit overissuance period is correctly established based on the facts presented today. An OI of \$██████████ in FAP benefits is established.

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.

Refusal to repay will not cause denial of current or future Medicaid (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. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the 01 relates to MA. BAM 720, p. 16.

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

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 did not commit an IPV 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) FIP FAP SDA CDC 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 FAP SDA CDC for a period of 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

2014-3471/DM

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:

