

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

IN THE MATTER OF:



Reg. No.: 2014-3413
Issue No(s): 3005; 2005; 4005
Case No.: [REDACTED]
Hearing Date: February 11, 2014
County: Oakland #04

ADMINISTRATIVE LAW JUDGE: Susanne E Harris

HEARING DECISION
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 February 11, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], 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 over-issuance (OI) of State Disability Assistance (SDA), Food Assistance Program (FAP) and 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 State Disability Assistance (SDA), Food Assistance Program (FAP) and Medical Assistance Program?

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 3, 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 not requested that the Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP, SDA and MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on April 28, 2010, 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, SDA and MA benefits outside of the State of Michigan beginning in November 2011.
8. The OIG indicates that the time period they are considering the fraud period for FAP is December 1, 2012 to April 30, 2012.
9. The OIG indicates that the time period they are considering the fraud period for MA is December 1, 2011 to May 31, 2012.
10. The OIG indicates that the time period they are considering the fraud period for SDA is December 1, 2011 to April 30, 2012.
11. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP, \$ [REDACTED] in SDA and \$ [REDACTED] in MA benefits from the State of Michigan.
12. This was Respondent's first alleged IPV.
13. A notice of hearing was mailed to Respondent at the last known address and 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 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 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 (2011), 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 (2011), p. 6; 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.

DHS alleged Respondent intentionally failed to report a change in residency to DHS resulting in improper FAP benefit issuances. To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (2012), p. 1. For FAP benefits, 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. *Id.* Eligible persons may include persons who entered the state with a job commitment or to seek employment or students (this includes students living at home during a school break.) *Id.*

A requirement to the IPV claim is that Respondent lost Michigan residency. A loss of Michigan residency does not necessarily coincide with leaving the State of Michigan. DHS 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 not considered temporarily absent. BEM 212 (2012), pp. 2, 3; in other words, if a person is out of a home longer than 30 days, they are no longer in the home. The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for the absent person to return home. The policy is not necessarily directly applicable to residency, but it seems reasonable to allow clients a 30-day period before residency in another state is established; the 30-day period beginning with a client's first out-of-Michigan food purchase.

During the hearing, the RA did fax to this Administrative Law Judge correspondence from the Respondent in which the Respondent admits to using her FAP and SDA in [REDACTED]. The Respondent further indicates that she did not use her MA benefits in [REDACTED]. She therefore questions why it is she is required to repay benefits she did not use.

Based on the presented evidence, Respondent is found to not be a Michigan resident as of 12/18/11; 30 days after Respondent first accessed FAP benefits outside of Michigan. The Respondent was aware of her responsibility to report changes in all household circumstances within 10 days to the Department. The Respondent has no apparent physical or mental impairments which would limit her ability to fulfill such

responsibility. Accordingly, it is found that DHS has established that the Respondent committed an IPV.

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 (2011), 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 RA alleges that it is the Respondent's first IPV. As such, the Administrative Law Judge concludes that the appropriate disqualification period for FAP is one year. There is no disqualification period for SDA and MA, though the issue of an OI is still be addressed in each of those programs.

Over-issuance

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.

An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.* For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (2012), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

Establishing whether DHS or Respondent was at fault for the OI is of no importance to the collectability of over-issued FAP benefits because DHS may collect the OI in either scenario. Determining which party is at fault may affect the OI period. There is insufficient evidence that Respondent is at fault for the OI. It should be noted that Respondent's use of FAP benefits outside of Michigan is unpersuasive evidence of fault because there is no reason for a client to believe that such use is improper. It is found that the OI was due to DHS error.

OI amounts are affected by the full standard of promptness (SOP) for change processing and the negative action period. BAM 705 (2012), pp. 4-5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.* For non-income changes, DHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. *Id.*

DHS alleged that FAP benefits were over-issued to Respondent over the period of 12/1/11-4/30/2012. It was found above that the Respondent was not a Michigan resident as of 12/18/11. Allowing 10 days for reporting of the change and 10 days to calculate the benefit month affected results in a date of 1/7/12 and an effective benefit month of 1/2012. It is therefore found that the FAP benefit OI period was incorrectly determined to be from 12/1/11-4/30/12. DHS alleged that the Respondent received a total of \$ [REDACTED] in FAP benefits from the State of Michigan over the period of 12/1/2011-4/30/2012. Based on a careful consideration of the evidence in the record, this Administrative Law Judge concludes that the proper OI period is from 1/1/12 to 4/30/12. As the Respondent's monthly FAP allotment was \$ [REDACTED] this Administrative Law Judge concludes that the proper OI amount is \$ [REDACTED]. Accordingly, DHS established an OI of \$ [REDACTED] in FAP benefits for the period of 1/1/12-4/30/12.

BAM 710 p. 1, provides that, in situations where changes are unreported by ongoing recipients, the OI period begins the first day of the month after the month in which the standard reporting time period, plus the negative action period would have ended. BAM 710 p. 2, provides that for an OI that is unrelated to unreported income or a change affecting the allowances, the amount of that OI is the amount of MA payments. Therefore, if the Department made payments on behalf of the Respondent, then those benefits were issued to the Respondent regardless of whether she availed herself of them. As such, the Respondent's assertion that she should not have to repay MA benefits that she did not use, is not persuasive.

The Administrative Law Judge determines that December 1, 2011 is not the appropriate beginning of the OI. The appropriate OI time period begins on January 1, 2012. Therefore, the Administrative Law Judge concludes that the appropriate OI time period for the MA OI is 1/1/12-5/31/12 and the appropriate OI time period for the SDA OI is 1/1/12-4/30/12.

As the OI time period essentially began one month too soon, the OI amounts should therefore be adjusted accordingly. The evidence indicates that the Respondent was issued \$ [REDACTED] each month in SDA benefits. Therefore, the Administrative Law Judge concludes that the proper OI amount for the SDA OI is \$ [REDACTED]. The record also reflects that the Respondent was issued \$ [REDACTED] in MA benefits in the month of December 2011. Therefore, this Administrative Law Judge determines that the proper OI amount is \$ [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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP, SDA and MA.

The Department is ORDERED to reduce the FAP OI to \$ [REDACTED] for the period 1/1/12-4/30/12, and initiate recoupment procedures in accordance with Department policy.

The Department is ORDERED to reduce the SDA OI to \$ [REDACTED] for the period 1/1/12-4/30/12, and initiate recoupment procedures in accordance with Department policy.

The Department is ORDERED to reduce the MA OI to \$ [REDACTED] for the period 1/1/12-5/31/12, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for 12 months.



Susanne E Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/4/14

Date Mailed: 3/5/14

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.

SEH/tb

cc:

