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

IN THE MATTER OF:				
		Reg. No.: Issue No.: Case No.: Hearing Date: County:	2014-3487 3005 February 10, 2014 Montcalm	
ADMINISTRATIVE LAW JUDGE: Zainab Baydoun				
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 February 10, 2014, from Detroit Michigan. The Department was represented by				
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).				
	<u>ISSUES</u>			
1.	Did Respondent receive an overissuance (OI) Family Independence Program (FIP) Food Assistance Program (FAP) Medical Assistance (MA) benefits that the Department is entitled to receive	State Disability A Child Developme	ssistance (SDA) ent and Care (CDC)	
2.	Did Respondent, by clear and convincing evid	dence, commit an	Intentional Program	

Should Respondent be disqualified from receiving

[Family Independence Program (FIP)? [State Disability Assistance (SDA)?

3.

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 \boxtimes has \square has not requested that Respondent be disqualified from receiving program benefits.
3.	Respondent was a recipient of $\ \square$ FIP $\ \boxtimes$ FAP $\ \square$ SDA $\ \square$ CDC $\ \square$ MA benefits issued by the Department.
4.	Respondent \boxtimes was \square was not aware of the responsibility to report changes in household circumstances, such as a change 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 it is considering the fraud period is October 1, 2012, through June 30, 2012 (fraud period).
7.	During the alleged fraud period, the Department alleges that Respondent was issued in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8.	The Department alleges that Respondent received an OI in \square FIP \boxtimes FAP \square SDA \square CDC \square MA benefits in the amount of \$5345.
9.	This was Respondent's \boxtimes first \square second \square third alleged IPV.
10.	A notice of hearing was mailed to Respondent at the last known address and \square was \boxtimes 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 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 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, or
 - the total OI amount is less than \$1000, 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 (July 2013), 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 (July 2013), p. 6; 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 (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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2012), p. 1. For FAP purposes, 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 212 (April 2012), pp. 2-3.

At the hearing, the Department established that from August 25, 2012, to August 4, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively out of state, in Tennessee, Maryland, Pennsylvania, and Ohio. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits, 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 contention that Respondent committed an IPV, the Department presented an application that Respondent submitted to the Department on July 19, 2012, which is sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances. Respondent used her FAP benefits in Michigan initially. However, within one month of her application date, she began using the benefits exclusively out of state and this use continued for one year. The Department also presented a Lexis Nexis summary which indicates that Respondent had addresses associated with her name in the state of Tennessee during the alleged fraud period.

This evidence, in the absence of any evidence to the contrary, was sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning her out-of-state move for the purpose of maintaining her Michigan FAP eligibility. Therefore, the Department has established that Respondent committed an IPV concerning her FAP benefits.

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 (July 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. 16.

In this case, the Department established that Respondent committed a FAP IPV. Therefore, Respondent is subject to a one-year disqualification from the FAP program.

Overissuance

The Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, 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. 8; BAM 715 (July 2013), pp. 1, 6; BAM 705 (July 2013), p. 6. At the hearing, the Department established that the State of Michigan issued a total of in FAP benefits to Respondent from November 1, 2012, through June 30, 2013. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period. The Benefit Summary Inquiry does not indicate whether or not Respondent was issued FAP benefits for the month of October 2012, which is the first month of the fraud period, however.

In support of its FAP case, the Department presented Respondent's FAP transaction history showing her 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 she 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 in FAP benefits it issued to Respondent between November 1, 2012, and June 30, 2013.

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 \boxtimes did \square did not commit an IPV by clear and convincing evidence.
2.	Respondent \boxtimes did \square did not receive an OI of program benefits in the amount of \$5344 from the following program(s) \square FIP \boxtimes FAP \square SDA \square CDC \square MA.
The	Department is ORDERED to initiate recoupment procedures for the amount of in accordance with Department policy.

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

Zaluab Baydorun

Zainab Baydoun

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

Date Signed: March 7, 2014
Date Mailed: March 10, 2014

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.

ZB/tm

CC:

