

1. The Department's OIG filed a hearing request on March 3, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FAP program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to report changes in circumstances.
5. The Department's OIG indicates that the time period it is considering the fraud period for FAP benefits is October 1, 2011 through November 30, 2011 (FAP fraud period).
6. The Department's OIG indicates that the time period it is considering the fraud period for MA benefits is August 1, 2011 through December 31, 2011 (MA fraud period).
7. The Department's OIG indicates that during the FAP fraud period, Respondent was issued \$1,336.00 in FAP 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's OIG indicates that during the MA fraud period, Respondent was issued \$3,360.65 in 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.
9. The Department alleges that Respondent received an OI in FAP and MA benefits in the total amount of \$4,696.65.
10. This was Respondent's first alleged IPV.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k. .

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 \$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 (January 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 (January 2011), 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.

FAP

Additionally, a homestead is where a person lives that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. BEM 400 (October 2011), p.24. The Department is alleging that Respondent committed an IPV of her FAP benefits from October 1, 2011 through November 30, 2011. In support of the alleged IPV, the Department testified that Respondent admitted that she and the children were not living at the 7th Street address because it was too cold and that all of the family's belongings were at the Catsyl Road address, which is her mother's home. Further, the Department sent an investigator to the 7th Street home and found the home inhabitable with no food, stove, refrigerator or clothing. Respondent testified that she never stated that she was not living at the 7th Street address. Accordingly, the Department contends that because the 7th Street address was not the family's homestead, it should have been reported as a countable asset.

Respondent indicated that the family moved into the 7th Street home on August 1, 2011 and remained in the home until late November 2011 when the furnace became inoperable. Respondent acknowledged that her children began sleeping at her mother's home in late November but stated that the children were at the 7th Street address during the day. Respondent further stated that her husband would stay overnight at his mother's home beginning in September 2011 because she was ill but maintained that he was also at the 7th Street address during the day. Respondent testified that her entire family returned to the 7th Street address full time, including overnights, in February 2012 and have lived at that address since that time.

Department policy requires that if the owner intends the home to become her homestead and has no other homestead, it is to be excluded as a countable asset. BEM 400, p.27. Respondent testified that when the home was purchased, not only did

she intend it to become her homestead but that she and her family moved into the home. Accordingly, even if Respondent did not immediately move into the home or she did not reside in the home for a short period of time after initially moving in, because she clearly intended it to become her homestead, it could not be considered a countable asset. The Department did not present any evidence to show that Respondent had any other homestead and therefore, it has not established that Respondent committed an IPV of her FAP benefits for failure to report the 7th Street home.

MA

The Department is alleging that Respondent committed an IPV of her MA benefits from August 1, 2011 through December 31, 2011 because she failed to report the 7th Street home which it considered to be a countable asset. Department policy holds that only the following types of assets are to be considered as it relates to MA:

- Cash (which includes savings and checking accounts).
- Investments.
- Retirement Plans.
- Trusts. BEM 400 (July 2011), p. 1.

Accordingly, Respondent was not required to report the 7th Street home as it is not a countable asset under the MA program. As such, the Department has not established that Respondent committed an IPV of her MA benefits from August 1, 2011 through December 31, 2011 for failure to report the 7th Street home.

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. 12.

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 (October 2009), 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. 13.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP or MA benefits. Accordingly, Respondent is not subject to a disqualification for failing to report assets relating to FAP benefits received from October 1, 2011 through November 30, 2011 or the MA benefits she received from August 1, 2011 through December 31, 2011.

Overissuance

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 Department has

alleged an OI of FAP benefits and MA benefits resulting from Respondent's failure to report assets.

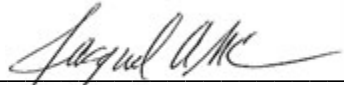
As previously stated, regarding Respondent's FAP benefits, there was no requirement to report the 7th Street address as an asset as Respondent intended this residence to be her homestead and did not own any other homestead. Accordingly, Respondent was entitled to the FAP benefits she received during the FAP fraud period. Likewise, regarding Respondent's MA benefits, there was no requirement to report real property and as such, Respondent was entitled to the MA benefits she received. Because Respondent did not receive more benefits than she was entitled to receive, no OI has occurred and the Department is therefore not entitled to 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, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) of FAP benefits from October 1, 2011 through November 30, 2011.
2. The Department has not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) of MA benefits from August 1, 2011 through December 31, 2011.
3. Respondent did not receive an OI of FAP benefits in the amount of \$1,336.00 from October 1, 2011 through November 30, 2011.
4. Respondent did not receive an OI of MA benefits in the amount of \$3,360.65 from August 1, 2011 through December 31, 2011.

The Department is ORDERED to delete the OI and cease any recoupment action.


JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 12, 2014

Date Mailed: June 12, 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.

JAM/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]