

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

IN THE MATTER OF:



Reg. No.: 2014-31323
Issue No.: 1005;3005
Case No.:
Hearing Date: May 12, 2014
County: Shiawassee (00)

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 May 12, 2014, from Detroit, Michigan. The Department was represented by , Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included:

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 January 17, 2014, 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 FAP 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 changes in 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 alleged fraud period is July 1, 2013, to December 31, 2013 for both FAP and MA.
7. During the alleged fraud period, the Department alleges that Respondent was issued \$4672 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. During the alleged fraud period, the Department alleges that Respondent was issued \$1782 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$4672.
10. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1782.
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 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 \$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. 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 (July 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 (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 (July 2013), p. 1. 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 (October 2013), pp. 2-3.

In this case, the Department presented a redetermination Respondent submitted to the Department on December 16, 2012, prior to the alleged fraud period. (Exhibit 1, pp.10-19). While this redetermination was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, it does not 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.

At the hearing, the Department testified that from July 13, 2013, to December 13, 2013, Respondent used FAP benefits issued by the State of Michigan out of state in Texas. The Department failed to present Respondent's FAP transaction history showing her use of FAP benefits issued by the State of Michigan exclusively out of state; consequently, the testimony was not supported by documentary evidence.

The Department presented a Lexis Nexis summary which indicates that Respondent had an address associated with her name in the State of Texas during the alleged fraud period, however, addresses associated with Respondent's name were identified in the State of Michigan during the alleged fraud period as well.

The evidence presented by the Department insufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits. In the absence of any clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish 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 failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP program.

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 Respondent received an OI of FAP and MA benefits resulting from her receipt of Michigan-issued benefits while no longer a state resident.

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. The Department also sought to recoup a MA overissuance. The Department may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710, p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. The amount of an MA OI for an OI due to any reason other than unreported income or a change affecting need allowances is the amount of MA payments. BAM 710, pp. 1-2. For MA purposes, an individual is a Michigan resident if living in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely. BEM 220, pp. 2-3.

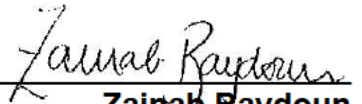
Based on the above discussion, the Department has failed to establish that Respondent was ineligible for the FAP and MA benefits issued to her by the State of Michigan, as it was not determined that Respondent was no longer a Michigan resident. Therefore, the Department has failed to establish an OI, and is 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, concludes that:

1. Respondent did did not commit an IPV of the FAP by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$4672 from the following program(s) FIP FAP SDA CDC MA.
3. Respondent did did not receive an OI of program benefits in the amount of \$1782 from the following program(s) FIP FAP SDA CDC MA.

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



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

Date Signed: May 22, 2014

Date Mailed: May 22, 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/tlf

cc:

