

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014-32878
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 12, 2014
County: Saginaw (00)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

**HEARING DECISION FOR CONCURRENT BENEFITS
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 June 12, 2014, from Detroit, 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) Food Assistance Program (FAP)
 Medical Assistance Program (MA)
benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP) Food Assistance Program (FAP)

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 March 31, 2014, 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 has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP FIP MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on December 18, 2009, 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. The OIG indicates that the time period they are considering the fraud period is October 1, 2012, to December 31, 2012.
8. During the alleged fraud period, Respondent was issued \$600 in FAP FIP MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Indiana.
10. This was Respondent's first second third alleged IPV.
11. 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 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 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 (May 2014), pp. 12-13.

As a preliminary matter, Respondent received a previous IPV for the time period of September 2009 to July 2011 and the OI amount was \$3,383. See Exhibit 1, p. 34. Respondent is serving a ten-year disqualification period due to the trafficking of her FAP benefits. See Exhibit 1, pp. 34-38. Respondent signed an IPV Repayment Agreement and Request for Waiver of Disqualification Hearing dated November 14, 2011. See Exhibit 1, pp. 39-42. As such, this hearing will address whether Respondent has committed a second FAP IPV offense.

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 (May 2014), p. 7; 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 update residency information for the purpose of receiving FAP benefits from more than one state. It should be noted that the OIG report indicated that from January 2012 through December 2012, Respondent received FAP benefits only for her son and her case was subsequently closed as of January 2013. See Exhibit 1, p. 3.

Moreover, the Department alleges that Respondent received an OI in FAP benefits in the amount of \$600 during the alleged fraud period. 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 the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (May 2014), p. 6. However, the Department applied the inappropriate OI begin date of October 1, 2012. The Department presented Respondent's benefits summary inquiry that showed she received FAP benefits from September 2012 to November 2012. See Exhibit 1, p. 63. The Department also presented Respondent's application for FAP benefits in the State of Indiana dated October 23, 2012. See Exhibit 1, pp. 45-59.

Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the RS, whichever is later. BAM 720, p. 7. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 720, p. 7. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7; See also BAM 715, pp. 4-5.

Applying the OI begin date policy and in consideration of the out-of-state application dated October 23, 2012, it is found that the Department applied the inappropriate OI begin date and the OI begin date is December 1, 2012. See BAM 720, p. 7 and BAM 715, pp. 4-5.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from September 2012 to November 2012. See Exhibit 1, p. 63. However, there are two issues with the Department's OI period and amount. First, the Department indicated its OI period is from October 2012 to December 2012; however, the benefit summary inquiry does not show any FAP benefits issued for December 2012. See Exhibit 1, p. .

63. Second, the Department sought an OI amount of \$600, but it is unclear how the Department calculated this amount. The payment amounts for September 2012 to November 2012 was \$127 and a recoupment amount of \$73. See Exhibit 1, p. 63. It appears the recoupment amount is based on the prior IPV. Nevertheless, as stated above, the proper OI period start date is December 2012 and the benefits summary inquiry fails to show any benefits issued for that month. As such, the Department failed to establish an OI amount.

Furthermore, an IPV requires that an OI exist. Department policy states that suspected IPV means an OI exists for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1. Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. BPG 2014-002 (January 2014), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2014-002, p. 36. Because the Department cannot establish the OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP program. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16.


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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$600 from the following program(s) FAP FIP MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.


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

Date Signed: June 19, 2014

Date Mailed: June 19, 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.

EJF/cl

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