

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2014-32889
Issue No(s): 1005; 2006; 3005
Case No.: ██████████
Hearing Date: June 26, 2014
County: Genesee (06)

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 26, 2014, from Detroit, Michigan. The Department was represented by ██████████ er, 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 28, 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 21, 2012, Respondent reported a Michigan address.
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 FIP MA benefits outside of the State of Michigan beginning in January 2013.
8. The OIG indicates that the time period they are considering the FAP fraud period is December 21, 2012 to June 30, 2013.
9. The OIG indicates that the time period they are considering the FIP fraud period is January 16, 2013 to April 30, 2013.
10. The OIG indicates that the time period they are considering the MA overissuance period is December 1, 2012 to June 30, 2013.
11. During the fraud period, Respondent was issued \$6,476.03 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.
12. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$6,476.03.
13. During the alleged fraud period, Respondent was issued FAP FIP MA benefits from the State of Illinois.

14. This was Respondent's first second third alleged IPV.
15. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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 of Human Services (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 (May 2014), pp. 12-13.

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 (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.

FAP IPV

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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. Other changes must be reported within 10

days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in: address and shelter cost changes that result from the move. BAM 105, p. 7.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (November 2012), p. 1.

Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1.

A person cannot receive FAP in more than one state for any month. BEM 222, p. 2.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2012), p. 1.

The Department's OIG indicates that the time period it is considering the FAP fraud period is December 21, 2012 to June 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes in residence and that she made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously.

First, the Department presented an application dated December 21, 2012, to show that Respondent misrepresented circumstances of eligibility. See Exhibit 1, pp. 17-52. In the application, Respondent indicated that she has moved or received assistance from another state. See Exhibit 1, p. 21. Respondent indicated she moved to Michigan on November 8, 2012 and received FAP assistance from another state on October 8, 2011. See Exhibit 1, p. 21.

Second, the Department presented Respondent's FAP transaction history. A review of the transaction history indicated she used her FAP benefits issued by the State of Michigan out-of-state exclusively in Illinois from January 21, 2013 to June 20, 2013. See Exhibit 1, pp. 11-15.

Third, the Department presented a LexisNexis report, to show that Respondent established a residence in Illinois during the period of alleged fraud. See Exhibit 1, pp. 68-69.

Fourth, the Department presented out-of-state correspondence from Illinois dated June 14, 2013. See Exhibit 1, p. 66. The out-of-state correspondence indicated Respondent

filed an application for FAP and Medical in 2011 and received FAP benefits from May 2012 to June 2013. See Exhibit 1, pp. 66-67. The Department also presented a FAP benefit summary inquiry to show that Respondent received FAP benefits from Michigan between December 2012 to June 2013. See Exhibit 1, pp. 64-65. Thus, Respondent received FAP benefits simultaneously from Michigan and Illinois between December 2012 to June 2013.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

The Department has failed to show that the Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. A review of her application dated December 21, 2012, indicated that Respondent reported that she received assistance from the State of Illinois on October 8, 2011 and moved to Michigan on November 8, 2012. See Exhibit 1, p. 21. The Department testified that Respondent did not properly indicate that she received assistance at the time of application and should have instead put December 2012 to receive FAP assistance. However, this evidence presented that Respondent reported to the Department that she received assistance from Illinois and that she did not purposely report inaccurate information to the Department. As such, in the absence of any clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

FIP IPV

In this case, the Department alleges that Respondent committed an IPV of her FIP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FIP benefits while out of state.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012), p. 1. For FIP cases, a person is a resident if all of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

BEM 220, p. 1.

For FIP cases, a temporarily absent person is considered to be living in the home when all of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP EDG before the absence (newborns

are considered to have lived with the FIP EDG).

- The absence has lasted or is expected to last 30 days or less.

BEM 210 (January 2013), p. 2.

The Department's OIG indicates that the time period it is considering the fraud period is January 16, 2013 to April 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FIP eligibility.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FIP benefits. As stated in the FAP analysis, the evidence presented that Respondent reported to the Department that she received assistance from Illinois and that she did not purposely report inaccurate information to the Department. Instead, Respondent reported that she received assistance from Illinois.

Moreover, there was no evidence to show that Respondent, during the alleged FIP fraud period, represented that she was in Michigan. The Department did not present any evidence to establish Respondent's intent during the alleged IPV usage other than out-of-state usage, a LexisNexis report, and out-of-state correspondence. Nevertheless, the Department failed to show any evidence that Respondent intentionally withheld information concerning an out-of-state move during the alleged FIP fraud period.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining Michigan FIP eligibility, the Department has failed to establish that Respondent committed an IPV of FIP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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. 16. 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 has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP and FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP and FIP programs. BAM 720, p. 16

FAP 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 amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 705 (May 2014), p. 6 and BAM 715 (May 2014), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is client error and/or agency error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) or the Department of Information and Technology staff or department processes. BAM 705, p. 1. Examples include available information was not used or was used incorrectly, etc...See BAM 705, p. 1.

To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220, p. 1. For FAP cases, 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. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1.

For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (November 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

It appears that both a client and agency error is present. An agency error is present in this situation because Respondent reported that she received benefits from Illinois, however, the Department failed to act on this reported information. See Exhibit 1, p. 21. Therefore, she was not eligible for FAP benefits and was overissued FAP benefits for any period she was ineligible to receive FAP benefits during this time period.

Also, though, a client error is present in this situation because the Respondent failed to report a change in residency in order to continue receiving FAP benefits from Michigan. A review of the transaction history indicated she used her FAP benefits issued by the State of Michigan out-of-state exclusively in Illinois from January 21, 2013, to June 20, 2013. See Exhibit 1, pp. 11-15. The evidence presented that Respondent no longer

resided in Michigan and she moved to Illinois during the OI period. Therefore, she was not eligible for FAP benefits and was overissued FAP benefits for any period she was ineligible to receive FAP benefits during this time period. See BEM 212, p. 2 and BEM 220, p. 1.

Applying the overissuance period policy, it is found that the appropriate OI period begin date is December 21, 2012. See BAM 705, p. 5. 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 December 21, 2012 to June 30, 2013, in the amount of \$3,024. See Exhibit 1, pp. 64-65. Thus, the Department is entitled to recoup \$3,024 of FAP benefits it issued to Respondent for December 21, 2012 to June 30, 2013. BAM 705, p. 6 and BAM 715, p. 6.

FIP Overissuance

As stated previously, the FAP overissuance concluded there was persuasive evidence that Respondent was not a Michigan resident. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. Thus, a client error is also present for the FIP benefits because she failed to report a change in residency in order to continue receiving FIP benefits from Michigan. See BAM 705, p. 1 and BAM 715, p. 1. Thus, she was not eligible for FIP benefits and was overissued FIP benefits for any period she was ineligible to receive FIP benefits.

Applying the client error overissuance period standard and in consideration of the out-of-state use that began on January 21, 2013, the Department determined that the OI period began on January 16, 2013. See Exhibit 1, pp. 3 and 11. It is found that the Department applied the inappropriate OI period and the OI begin date is March 1, 2013. See BAM 715, pp. 4-5.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FIP benefits by the State of Michigan from January 16, 2013 to April 30, 2013, totaling \$1,722. See Exhibit 1, p. 10. However, as stated above, the OI amount of \$738 is subtracted from the total OI sought for the time period of January 16, 2013 to February 28, 2013. See Exhibit 1, p. 10. Thus, the Department is entitled to recoup \$984 of FIP benefits it issued to Respondent between March 1, 2013 to April 30, 2013.

MA Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (July 2013), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less.

BAM 710, p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department also alleges that an OI was present for her MA benefits. The Department alleges that she failed to notify the Department that she no longer resided in Michigan but her MA benefits continued to pay Respondent's and her two sons' health premiums/outpatient bills while they were out of state. The Department's OIG indicates that the time period it is considering the OI period is December 1, 2012 to June 30, 2013.

For MA cases (non-institutionalized persons), an individual is a Michigan resident if either of the following apply:

- The individual lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely.
- The individual or a member of the MA fiscal group has entered the state of Michigan for employment purposes, and has a job commitment, or is seeking employment.

BEM 220, pp. 1-2.

For Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA, a person's absence is temporary if for the month being tested:

- His location is known; **and**
- There is a definite plan for him to return home; **and**
- He lived with the group before the absence (**Note:** newborns and unborns are considered to have lived with their mothers); **and**
- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

BEM 211 (November 2012), pp. 2-3.

As stated previously, a FAP/FIP client error is present in this situation because Respondent failed to notify the Department of her change in residency and an OI

amount was established. See BAM 715, p. 1. The evidence is persuasive that Respondent and the additional group members (Respondent's two sons) were not Michigan residents. The evidence shows that the most probable explanation is that they lived outside of Michigan. See BEM 220, pp. 1-2. Moreover, the FAP transaction history shows that they were not temporarily absent from the group and they were not eligible for MA benefits. See BEM 211, pp. 2-3. The evidence also presented that the additional two group members (the two sons) resided with their mother (the Respondent) and there was no evidence to contradict that the sons were no longer members of the group during the alleged OI period. See Exhibit 1. Therefore, an MA client error is present in this situation because Respondent failed to notify the Department of her and the two sons' change in residency. See BAM 710, p. 1.

The Department determined that the OI period began on December 1, 2012. See Exhibit 1. It is found that the Department applied the inappropriate OI begin date and the begin date is March 1, 2013. See BAM 710, p. 1.

In establishing the OI amount, BAM 710 states that for an OI due to any other reason, the OI amount is the amount of MA payments. See BAM 710, p. 2. The Department presented a summary of the MA premiums/outpatient amounts paid for the sons' and/or Respondent's behalf from December 2012 to June 2013, which totaled \$1,730.03. See Exhibit 1, pp. 53-63. It should be noted that the Department provided separate billing amounts for the outpatient services and premiums paid. See Exhibit 1, pp. 61 and 63. The Department provided payment dates for the premium amounts, however, failed to provide payment dates for the outpatient services. See Exhibit 1, pp. 53-63. Thus, the Department failed to establish a proper OI amount for the outpatient amounts and the \$421.03 (outpatient amount) is subtracted from the total OI amount sought. See Exhibit 1, p. 61.

Additionally, as stated above, the OI period began in March 2013, thus the premium issuance amount of \$240.09 for December 2012 to February 2013 is subtracted from the total OI amount sought. See Exhibit 1, pp. 53-63. Thus, the Department is entitled to recoup \$1,069.83 of MA benefits it issued to Respondent for March 2013 to June 2013.

In summary, the total OI amount is \$5,077.83 as follows: (i) \$3,024 of FAP benefits it issued to Respondent for December 21, 2012 to June 30, 2013; (ii) \$984 of FIP benefits it issued to Respondent between March 1, 2013 to April 30, 2013; and (iii) \$1,069.83 of MA benefits it issued to Respondent for March 1, 2013 to 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, 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 \$5,077.83 from the following program(s) FAP FIP MA.

The Department is ORDERED to

- reduce the OI to \$5,077.83 as follows: (i) \$3,024 of FAP benefits it issued to Respondent for December 21, 2012 to June 30, 2013; (ii) \$984 of FIP benefits it issued to Respondent between March 1, 2013 to April 30, 2013; and (iii) \$1,069.83 of MA benefits it issued to Respondent for March 1, 2013 to June 30, 2013, and initiate recoupment procedures in accordance with Department policy.



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

Date Signed: July 3, 2014

Date Mailed: July 3, 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]