

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

IN THE MATTER OF:



Reg. No.: 201432447
Issue No(s): 2005, 3005
Case No.:
Hearing Date: June 25, 2014
County: Wayne County DHS #15

ADMINISTRATIVE LAW JUDGE: Kevin Scully

**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 25, 2014, from Lansing, Michigan. The Department was represented by 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) Food Assistance Program (FAP)
 Medical Assistance Program (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) 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 February 10, 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 29, 2011, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his 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 September 1, 2011, through June 30, 2012.
8. During the fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] 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 \$ [REDACTED]
10. During the fraud period, Respondent was issued \$ [REDACTED] 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.
11. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$ [REDACTED]
12. During the alleged fraud period, a group member listed on the Respondent's application for benefits was issued FAP FIP MA benefits from the State of Texas.
13. This was Respondent's first second third alleged IPV.
14. 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 1, 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 1, 2013), p. 6; 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.

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 1, 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.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (July 2013), p. 1.

In this case, the Respondent acknowledge the responsibility to report any changes to the size and composition of her benefit group on her application for assistance dated December 29, 2011. The Respondent applied for Food Assistance Program (FAP) benefits as a group of three, and also requested that group member B.R. receive Medical Assistance (MA). After conducting an investigation into the Respondent's eligibility to receive benefits, the Department discovered that group member B.R. was not living in the Respondent's household and was an active food assistance and medical assistance recipient in the state of Texas from September of 2011, through August of 2012. If the Respondent had reported to the Department that group member B.R. was not living in Michigan, she would have been eligible for a lesser amount of Food Assistance Program (FAP) benefits as a group of two, and she would not have

been eligible have group member B.R. to be enrolled in the Medical Assistance (MA) program as a non-resident of Michigan. The Respondent received Food Assistance Program (FAP) totaling \$ [REDACTED] but would have been eligible for \$ [REDACTED] if she had reported her group size accurately. The Claimant's benefit group would not have been eligible to receive any Medical Assistance (MA) for group member B.R. if it had been reported to the Department that this person was not a Michigan resident. The Department has established that the Respondent intentionally failed to report group member B.R.'s absence from Michigan for the purposes of receiving benefits that she would not have been entitled to otherwise.

No evidence was available during the hearing to establish that group member B.R. intended to remain a Michigan resident while she received food assistance and medical assistance while in Texas. The Department will apply a ten-year disqualification for concurrent receipt of benefits if fraudulent statements were made regarding identity or residency. BAM 720.

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 established by clear and convincing evidence that Respondent did did not commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP FIP MA.
3. Respondent did did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP FIP MA.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

- It is FURTHER ORDERED that
 Respondent be personally disqualified from participation in the FAP program for 10 years.



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

Date Signed: July 3, 2014

Date Mailed: July 3, 2014

201432447/KS

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.

KS/hj

cc:

