

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

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

Reg. No.: 14-001845  
Issue No.: 3005  
Case No.: ██████████  
Hearing Date: July 21, 2014  
County: WAYNE-DISTRICT (76)

**ADMINISTRATIVE LAW JUDGE: Eric Feldman**

**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 July 21, 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)     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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for  
 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 April 30, 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 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 residence.
5. Respondent  had  did not have an 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 FAP fraud period is May 1, 2013 to November 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,389 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.
8. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$1,389.
9. This was Respondent's  first  second  third alleged IPV.
10. 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.

### **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 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 his FAP benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state.

To be eligible, a person must be a Michigan resident. BEM 220 (March 2013), 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.

The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2013 to November 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's online application dated December 27, 2012, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 10-21.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 22-27. The FAP transaction history showed that from March 4, 2013 through

November 28, 2013, Respondent used FAP benefits issued by the State of Michigan out-of-state in New York. See Exhibit 1, pp. 22-27.

Third, the Department presented Respondent's employment verification, which indicated that he worked during the alleged fraud period. See Exhibit 1, pp. 28-30. A review of the document showed that Respondent was hired on May 9, 2013, and indicated that he had a New York address. See Exhibit 1, pp. 28-30.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The evidence is sufficient to establish that Respondent no longer resided in Michigan and he was no longer eligible for FAP benefits.

The Department presented evidence to establish Respondent's intent during the IPV usage. The Department presented evidence that Respondent was employed during the fraud period and the employment verification indicated that he had a New York address. See Exhibit 1, pp. 28-30. Moreover, the FAP transaction history showed that Respondent used out-of-state benefits in New York during the fraud period. See Exhibit 1, pp. 22-27. This evidence showed that Respondent no longer resided in Michigan and he intentionally withheld information concerning an out-of-state move during the fraud period in order to maintain his Michigan FAP eligibility.

In summary, there was clear and convincing evidence that Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. The Department has established that Respondent committed an IPV of FAP 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

**Overissuance**

Additionally, 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 720, p. 8.

During the hearing, it was discovered that Respondent signed an IPV Repayment Agreement on May 3, 2014 and it was received by the Department on June 2, 2014. By the Respondent signing the repayment agreement, the Department can initiate recoupment of the \$1,389 OI amount for the time period of May 1, 2013 to November 30, 2013. See BAM 705 (July 2014), p. 10 and BAM 715 (July 2014), p. 10. Based on this information, this hearing decision will not address the OI amount further due to the discovery of the Respondent signing the IPV Repayment Agreement on May 3, 2014.


**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  has not established by clear and convincing evidence that Respondent committed an IPV.

The Department is ORDERED to disqualify Respondent from

FIP  FAP  SDA  CDC for a period of  
 12 months.  24 months.  lifetime.

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

Date Signed: **7/23/2014**

Date Mailed: **7/23/2014**

EJF/cl

