

**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.: 14-003291
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 14, 2014
County: CALHOUN- (21)

ADMINISTRATIVE LAW JUDGE: LYNN M. FERRIS

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 July 14, 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) 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 May 30, 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. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using FAP FIP MA benefits outside of the State of Michigan beginning in March 1, 2012.
7. The OIG indicates that the time period they are considering the fraud period is March 1, 2012 through August 31, 2012..
8. During the alleged fraud period, Respondent was issued [REDACTED] 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. During the fraud period, the Respondent received [REDACTED] in MA benefits while no longer a resident of Michigan and her daughter received [REDACTED] in Medical benefits while no longer a resident of Michigan. During the hearing, the Department amended and reduced the amount of MA overissuance to [REDACTED] DOWN FROM [REDACTED]
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 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 (12/1/11), p. 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 (12/1/11), p. 6; BAM 720, p. 6.

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 OIG presented credible testimony that based upon a Paris Match which indicated that the Respondent was receiving benefits in Indiana. He contacted the Indiana Department of Human Services and determined that the Respondent was receiving FAP benefits in Indiana at the same time she was receiving Michigan FAP benefits. The Department presented evidence based upon his interview with Indiana DHS that the Claimant began receiving FAP in Indiana, from March 1, 2012 through August 31, 2012. The Indiana DHS also confirmed that the Claimant received MA benefits beginning 3/1/12 and ended 12/31/12. The Respondent's daughter also received MA benefits beginning 3/1/12 ongoing through 2/11/13. At the time of the Department's inquiry to Indiana, the Department could only contact that state's DHS equivalent by phone and could not obtain written confirmation. The Department credibly testified and confirmed the Indiana Social Services worker's name and the active FAP and MA dates. Therefore based upon the evidence presented it is determined that the Department has established an IPV for concurrent receipt of 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 (10/1/09), 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. 13.

In this case, The Department has established by clear and convincing evidence that the Respondent received concurrent benefits from both Michigan and Indiana, and thus is entitled to the imposition of a ten-year disqualification.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (12/1/11), p.1. The amount of the overissuance received is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720 and BAM 715.

In this case, the Department seeks an over issuance of FAP benefits in the amount of █████ dollars for the period February through June 2012, that the Respondent received benefits in Indiana; however, this sum covers February 2012. February 2012 should not be included in the overissued amount as the Claimant used her FAP in Indiana beginning February 19, 2012 and did not receive concurrent benefits until March 2012. Therefore, the FAP OI is reduced by \$████ the amount of February benefits for a total overissuance of \$████.

The Medical Assistance overissuance is also reduced to █████ based upon March benefits of █████ for Respondent's daughter and █████ for Respondent covering the period March, April, May and June 2012.

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 █████ (FAP) and █████ (MA) from the following program(s) FAP FIP MA.

The Department is ORDERED to

- reduce the OI to █████ FAP and █████ for MA for the period beginning March 2012, and initiate recoupment procedures in accordance with Department policy.

