

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

**IN THE MATTER OF:**

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

Reg. No.: 14-003852  
Issue Nos.: 2005, 3005  
Case No.: ██████████  
Hearing Date: September 18, 2014  
County: Lenawee

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**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 September 18, 2014, from Detroit, Michigan. The Department was represented by ██████████  
██ 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 Food Assistance Program (FAP) and 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 FAP benefits?

**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 June 9, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in address and residency to the Department.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Between August 1, 2013, and November 30, 2013, the Department alleges Respondent was issued \$1,275 in FAP benefits by the State of Michigan and was entitled to \$0 in such benefits during this time period.
7. The Department alleges that Respondent received an FAP OI in the amount of \$1,275.
8. Between August 1, 2013, and December 31, 2013, the Department alleges it paid \$3,179.54 in MA benefits on behalf of Respondent's group members and that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an MA OI in the amount of \$3,179.54.
10. This was Respondent's first alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and 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 (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 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 concerning her FAP benefits because she intentionally misrepresented her residency in order to receive FAP benefits from the State of Michigan. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (July 2013), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if she has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (July 2013 and October 2013), p. 3.

In support of its case that Respondent committed an IPV by misrepresenting her residency, the Department presented (i) a transaction history showing Respondent's use of her Michigan-issued FAP benefits by date and location, (ii) online applications Respondent submitted to the Department on April 4, 2013, and October 8, 2013; and (iii) a benefit summary issuance showing FAP benefits issued to Respondent. The evidence presented shows that Respondent used her Michigan-issued FAP benefits in [REDACTED] from June 9, 2013, to August 15, 2013. Respondent did not receive FAP benefits for September 2013. After she reapplied on October 8, 2013, she began using her Michigan-issued FAP benefits exclusively in [REDACTED], with no Michigan use at all, from October 17, 2013, through November 23, 2014. In her October 8, 2013, application, Respondent indicated that she was homeless but identified herself as a Michigan resident and provided a Michigan mailing address. The evidence presented established that Respondent was not living in Michigan at the time of her October 8, 2013, application and misrepresented her residency.

In the absence of any evidence to the contrary, the evidence presented by the Department was sufficient to establish by clear and convincing evidence that Respondent was no longer residing in Michigan at the time of her October 8, 2013, application and she misrepresented her residency in that application for the purpose of

maintaining eligibility for Michigan-issued FAP benefits. Therefore, the Department has established that Respondent committed an IPV concerning her 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 (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 established that Respondent committed an FAP IPV. Because this was Respondent's first IPV, she is subject to a one-year disqualification from the FAP program.

### **Overissuance**

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department alleges that Respondent was overissued FAP and MA benefits.

#### **FAP Overissuance**

The amount of the FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, at the hearing, the Department revised the FAP OI period to run from August 1, 2013, to November 30, 2013, and alleged that Respondent was overissued FAP benefits during that period because she lacked Michigan residency. As discussed above, Respondent lacked Michigan residency. Based on out-of-state use beginning June 9, 2013, the OI period began August 1, 2013. BAM 720, p. 7. The benefit summary issuance presented by the Department showed that, from August 1, 2013, to November 30, 2013, Respondent received \$1,275 in FAP benefits from the Department.

Thus, the Department is entitled to recoup and/or collect \$1,275 from Respondent for overissued FAP benefits between August 2013 and November 2013.

#### **MA Overissuance**

The Department also revised the MA OI period to run from August 1, 2013, to December 31, 2013, and alleged that Respondent was overissued MA benefits during that period because she lacked Michigan residency. A person must be a Michigan

resident to receive MA issued by the Department. BEM 220, p. 1. For MA purposes, an individual is a Michigan resident if either (i) the individual lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely or (ii) 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. An absence is temporary for MA purposes if it does not last an entire month. BEM 211 (July 2013), pp. 2-3.

As discussed above, Respondent's FAP transaction history established that she was not living in Michigan and she was not temporarily absent from the state. Therefore, Respondent was not a Michigan resident for MA purposes from August 1, 2013, to December 31, 2013. Respondent's two older minor children, [REDACTED] and [REDACTED], are both in Respondent's MA fiscal group and, therefore, also lacked Michigan residency. See BEM 220, pp. 2, 5. However, the evidence shows that Respondent's [REDACTED] received MA coverage as an SSI recipient. Therefore, she was not a member of Respondent's fiscal MA group. BEM 211, p. 6. Because the Department failed to establish that [REDACTED] received an SSI state supplement payment from another state, it failed to establish that she was not a Michigan resident. BEM 220, p. 2. Therefore, the Department may seek an MA OI from Respondent based on lack of Michigan residency only with respect to payments it made on behalf of Respondent, [REDACTED].

The Department's right to seek an MA OI, however, is only available if the OI is due to client error or IPV, not when due to agency error. BAM 710, p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. Because, as discussed above, the transaction history shows that Respondent was not living in Michigan between August 1, 2013, and December 31, 2013, and did not report her out-of-state move, the OI resulted from client error. Therefore, the Department could seek a recoupment of an MA overissuance based on client error if an overissuance is established.

The amount of an MA OI for an OI due to any reason other than unreported income or a change affecting need allowances is the amount of MA payments. BAM 710, pp. 1-2. The Department established that the State of Michigan paid \$3,179.51 in insurance premium payments to provide Respondent and her three minor children with MA coverage from August 1, 2013, to December 31, 2013. Excluding the payments made on [REDACTED] behalf reduces the MA OI to \$464.17.

Under the evidence presented, the Department is eligible to recoup and/or collect from Respondent an MA OI of \$464.17, the insurance premiums the Department paid on behalf of Respondent and her two oldest minor children.

In total, the Department is entitled to recoup and/or collect from Respondent \$1,739.17 in overissued FAP and MA benefits.

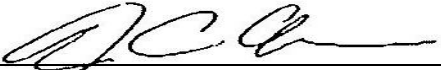
**DECISION AND ORDER**

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP program benefits in the amount of \$1,275.
3. Respondent received an OI of MA program benefits in the amount of \$464.17.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$1,739.17 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for a period of 12 months.

  
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**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **9/22/2014**

Date Mailed: **9/22/2014**

ACE / pf

**NOTICE:** The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

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