

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

**IN THE MATTER OF:**

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

Reg. No.: 2014-35483  
Issue No(s): 1005; 2005; 3005; 6005  
Case No.: ██████████  
Hearing Date: September 18, 2014  
County: Montcalm

**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 Family Independence Program (FIP), Food Assistance Program (FAP), Child Development and Care (CDC) 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 benefits for FIP, FAP and 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 January 16, 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 FIP, FAP, MA and CDC benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency and address 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. The Department alleges that Respondent received an OI totaling \$12,427.73 as follows:
  - FAP benefits for July 1, 2009, to July 31, 2009, totaling \$474;
  - FAP benefits for February 1, 2010, to June 30, 2010, totaling \$3,527;
  - FIP benefits for March 1, 2010, to June 30, 2010, totaling \$2,766;
  - MA benefits for March 1, 2010, to June 30, 2010, totaling \$1,090.53;
  - CDC benefits for September 1, 2009, to December 31, 2009, totaling \$4,570.20.
7. This was Respondent's first alleged IPV.
8. 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 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 (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 Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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), 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 (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 (i) concerning his FAP benefits because he received food assistance benefits from the State of ██████████ at the same time he received FAP benefits from the State of Michigan and (ii) concerning both his FIP and FAP benefits because he intentionally misrepresented his residency and received Michigan-issued benefits while he was no longer a Michigan resident.

A client is not eligible to receive FAP benefits from two different states for the same month. BEM 222 (June 2011), p. 1. In support of its allegation that Respondent received concurrent FAP benefits from the State of ██████████ and the State of Michigan in July 2009, the Department presented a FAP benefit summary issuance showing that Respondent received Michigan-issued FAP benefits in July 2009 and a July 10, 2009, letter from the State of ██████████ Department of Human Services. Although the Department contends that the letter establishes that Respondent received FAP benefits from ██████████ in July 2009, the letter does not clearly identify that benefits were issued to Respondent for July 2009. It is further noted that in the July 10, 2009, application he submitted to the Department, Respondent notified the Department that he recently moved to Michigan from Tennessee and he had received FAP benefits from the State of ██████████ prior to his move. By disclosing his receipt of benefits, Respondent showed that he did not intend to commit an IPV. Under the evidence

presented, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV by receiving concurrent FAP benefits.

The Department also alleges that Respondent committed an IPV concerning his FAP and FIP benefits because he lacked Michigan residency. To be eligible for FIP and FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2010), p. 1. For FIP purposes, a person is a resident if he is not receiving assistance from another state, is living in Michigan except for a temporary absence, and intends to remain in the state permanently or indefinitely. BEM 220, p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he 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 FIP or FAP benefits issued by the State of Michigan. BEM 2011 (January 2010), p. 2; BEM 212 (January 2010), p. 2.

In support of its IPV case based on lack of residency, the Department presented a FAP transaction showing Respondent's use of his FAP benefits by date, time and location. The transaction history establishes that Respondent began using his Michigan-issued FAP benefits exclusively out of state on December 19, 2009, and he continued to use his benefits exclusively out of state through August 4, 2010.

While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for Michigan-issued FAP or FIP benefits, to establish an IPV the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

To establish its IPV case against Respondent, in addition to relying on the transaction history, the Department presented applications Respondent submitted to the Department on July 10, 2009, and August 9, 2009. However, the Department did not present any documentation Respondent submitted to the Department alleging a Michigan residence during the period he used his Michigan-issued FAP benefits out of state. In the absence of such evidence, the Department has failed to establish by clear and convincing evidence that Respondent intentionally misrepresented his residency for the purpose of maintaining eligibility for Michigan-issued FAP or FIP benefits.

Therefore, the Department has failed to establish Respondent committed an IPV concerning his FAP or FIP 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.

Because the Department failed to establish by clear and convincing evidence that Respondent committed an IPV concerning his FIP or FAP benefits, he is not subject to a disqualification from either program.

With respect to the Department's request on the record for a CDC disqualification, it is noted that Department policies did not provide for client CDC disqualifications until April 2014. BEM 708 (April 2014), p. 1; Bridges April Policy Bulletin for CDC, BPB 2014-008, pp. 2-3. Because the Department requested a hearing in this matter in January 2014, the CDC disqualification provisions do not apply to this case.

### **Overissuance**

In this case, the Department alleged an OI of FIP, FAP, MA, and CDC benefits. The evidence at the hearing established that a hearing was held May 14, 2014, concerning Respondent's wife before Administrative Law Judge (ALJ) Darryl Johnson in Registration No. 2014-30563 (Exhibit 3). The hearing against Respondent's wife alleged that she was overissued the same benefits for the same time periods at issue in the current hearing against Respondent. In a Hearing Decision issued May 15, 2014, the ALJ found that Respondent's wife was overissued \$1,090.53 in MA benefits, \$2,766 in FIP benefits, and \$4,001 in FAP benefits, for a total OI of \$7,857.53 and ordered the Department to initiate recoupment procedures for \$7,857.53. Repayment of an OI is the responsibility of anyone who was an eligible, disqualified or other adult in the program group at the time the OI occurred. BAM 725 (July 2014), p. 1. Because FIP, FAP and MA OIs have been established for the periods at issue in this case and Respondent was an adult member of the benefit groups at issue during the same time periods at issue in his wife's case [see BEM 211 (January 2010), p. 5; BEM 210 (January 2010), p. 3; BEM 212 (January 2010), p. 1], Respondent is responsible for those OIs. Therefore, the Department's request for hearing concerning the FIP, FAP and MA OIs against Respondent is dismissed.

Because the ALJ found no CDC OI against Respondent's wife in the May 15, 2014, Hearing Decision, the Department's CDC OI allegation against Respondent is considered but found without merit. The only basis for the Department's OI case against Respondent was based on lack of residency. See BEM 220, p. 1. The Department sought a CDC OI for benefits issued to Respondent from September 1, 2009, to December 31, 2009, but the FAP transaction history shows that Respondent did not begin using FAP benefits out of state until December 19, 2009. Therefore, he continued to be a Michigan resident for the CDC period at issue, which ended on December 19, 2009, the end date of the last CDC issuance made in Respondent's case. Therefore, there is no basis for a CDC OI

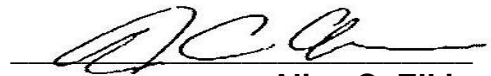
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has **not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did **not** receive an OI of CDC program benefits in the amount of \$4,570.

**DECISION AND ORDER**

The Department's January 16, 2014, request for hearing against Respondent concerning the FIP, FAP and MA OIs is DISMISSED.

The Department is ORDERED to delete the CDC OI and cease any recoupment and/or collection action.



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

Date Signed: September 23, 2014

Date Mailed: September 23, 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.

ACE/pf

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