

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 December 31, 2013, the Department alleges Respondent was issued \$878 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 \$878.
8. Between August 1, 2013, and January 31, 2014, the Department alleges it paid \$1,321.31 in MA benefits on Respondent's behalf 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 \$1,321.31.
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 for IPV hearings prior to October 1, 2014 involve the following cases:

- FAP trafficking overissuances 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 his FAP benefits because he intentionally misrepresented his 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 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 FAP benefits issued by the State of Michigan. BEM 212 (July 2013 and October 2013), p. 3.

The Department presented a transaction history showing Respondent's use of his Michigan-issued FAP benefits by date and location. This evidence established that, from June 23, 2013, to January 16, 2014, Respondent used FAP benefits issued to him by the State of Michigan exclusively out of state. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP 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.

In support of its IPV case against Respondent, in addition to the transaction history showing Respondent's out-of-state use of FAP benefits, the Department presented the online application Respondent submitted to the Department on April 27, 2013. At the time Respondent submitted his application, he identified a Michigan address as his residence. His transaction history shows that he did not begin using his Michigan-issued FAP benefits out of state until June 23, 2013, two months after applying. Therefore, the application does not support the Department's position that Respondent misrepresented his Michigan residency. While the application advised Respondent of his obligation to report household changes, the fact that Respondent failed to report his out-of-state move did not establish by clear and convincing evidence that he

intentionally misrepresented or withheld information concerning his residency for the purpose of maintaining FAP eligibility in the State of Michigan. The Department acknowledged that Respondent did not submit any documentation to the Department alleging Michigan residency during the period he was using his FAP benefits out of state.

Therefore, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV concerning his FAP case.

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. 13.

In this case, the Department failed to satisfy its burden of showing that Respondent committed an FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP program.

Overissuance

When a client group receives more benefits than 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, the Department alleges an FAP OI for August 1, 2013, to December 31, 2013, based on lack of Michigan residency. As discussed above, Respondent lacked Michigan residency. Based on out-of-state use beginning June 23, 2013, the OI period began August 1, 2013. BAM 720, p. 7. Although the benefit issuance printout presented by the Department showed that, from August 1, 2013, to December 31, 2013, Respondent received \$978 in FAP benefits from the Department, in all the documentation it delivered to Respondent, including the IPV Repayment Agreement, the hearing summary and its investigative report, the Department advised Respondent

that the alleged FAP OI was \$878. Therefore, the FAP OI is limited to \$878 for purposes of this Hearing Decision.

Thus, the Department is entitled to recoup and/or collect \$878 from Respondent for overissued FAP benefits between August 2013 and December 2013.

MA Overissuance

The Department also alleges that Respondent was ineligible for MA benefits from August 1, 2013, to January 31, 2014, because he lacked 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.

Respondent's FAP transaction history, as discussed above, established that he was not living in Michigan and he was not temporarily absent from the state. Therefore, Respondent was not a Michigan resident for MA purposes from August 1, 2013, to January 31, 2014.

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 June 23, 2013, and January 16, 2014, and there was no evidence presented that he reported his out-of-state move, the MA OI resulted from client error. Therefore, the Department could seek a recoupment of an MA OI based on client error if an OI 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 \$1,321.31 in insurance premium payments to provide Respondent with MA coverage from August 1, 2013, to January 31, 2014. Under the evidence presented, the Department is eligible to recoup and/or collect from Respondent an MA OI of \$1,321.31, the MA insurance premiums the Department paid on behalf of Respondent.

In total, the Department is entitled to recoup and/or collect from Respondent \$2,199.31 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 **not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP program benefits in the amount of \$878.
3. Respondent received an OI of MA program benefits in the amount of \$1,321.31.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$2,199.31 in accordance with Department policy.



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

Date Signed: **10/6/2014**

Date Mailed: **10/7/2014**

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]
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