

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

IN THE MATTER OF:



Reg. No.: 14-001978
Issue No.: 2006; 3005
Case No.: [REDACTED]
Hearing Date: November 17, 2014
County: SHIAWASSEE

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 November 17, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], 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 May 2, 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 the additional group members' (two children) 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 September 1, 2012, to January 31, 2013 (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the MA OI period is September 1, 2012, to January 31, 2013 (MA OI period).
8. During the fraud period, Respondent was issued \$7,299.88 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.
9. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$7,299.88.
10. This was Respondent's first second third alleged IPV.
11. On June 2, 2014, the Michigan Administrative Hearing System (MAHS) sent Respondent a Notice of Disqualification Hearing, which scheduled Respondent for a hearing on July 3, 2014.
12. On July 7, 2014, the Administrative Law Judge sent Respondent an Adjournment Order.

13. On October 7, 2014, MAHS sent Respondent a Notice of Disqualification Hearing, which rescheduled Respondent for a hearing on November 17, 2014.
14. 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 (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.

Food Assistance Program - Intentional Program Violation and Overissuance

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 timely that two of the Respondent's children no longer resided in Michigan, which caused an overissuance.

The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2012, to January 31, 2013. The Department argued that Respondent intentionally withheld his children's out-of-state move in order to continue receiving FAP benefits for a group size of three (Respondent plus two children), rather than a group size of one.

Moreover, the Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,835. See Exhibit 1, p. 3. 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; See also BAM 715 (May 2014), p. 6.

The Department presented Respondent's benefit summary inquiry to show how it calculated the total OI amount. See Exhibit 1, p. 55. However, it was discovered that the Department failed to establish the proper OI amount. The Department acknowledged that during the alleged fraud period, Respondent received FAP benefits for a group size of three. When the Department calculated the total OI amount, it based its OI calculation for a group size of three. This was an improper calculation by the Department as it should have calculated the OI amount based on a group size of two (the two children who left out-of-state). There was no evidence presented to show that the Respondent was also not eligible for benefits.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (March 2014), p. 36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 39.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to properly establish an OI amount for the FAP benefits. BAM 600, pp. 36-39. The evidence is insufficient to show that the OI amount calculated was based on the proper group composition. See Exhibit 1, p. 55. Thus, the Department is unable to establish an OI of FAP benefits in this case. BAM 600, pp. 36-39; BAM 700, p. 1; BAM 715, p. 6; and BAM 720, p. 8.

Furthermore, an IPV requires that an OI exist. Department policy states that suspected IPV means an OI exists for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1. Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. BPG 2014-002 (January 2014), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2014-002, p. 36. Because the Department cannot establish that the OI in this case, it cannot establish by clear and convincing evidence that Respondent

committed an IPV of his FAP program. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16.

Medical Assistance – Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (July 2013), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less.

BAM 710, p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department also alleges that an OI was present for the MA benefits. The Department alleges that Respondent failed to timely notify the Department that his two children no longer resided in Michigan but their MA benefits continued to pay the health premiums/doctor visits while the children were out-of-state. The Department's OIG indicates that the OI time period it is considering is September 1, 2012 to January 31, 2013.

For MA cases (non-institutionalized persons), an individual is a Michigan resident if either of the following apply:

- The individual lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely.
- The individual or a member of his MA fiscal group has entered the state of Michigan for employment purposes, and has a job commitment, or is seeking employment.

BEM 220 (January 2012), pp. 1-2.

For Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA, a person's absence is temporary if for the month being tested:

- His location is known; **and**
- There is a definite plan for him to return home; **and**
- He lived with the group before the absence (**Note:** newborns and unborns are considered to have lived with their mothers); **and**
- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

BEM 211 (October 2012 and November 2012), pp. 2-3.

Additionally, the evidence suggested that Respondent's children also received concurrent receipt of MA benefits. Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (June 2011 and November 2012), p. 1. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. For MA benefits, the Department assumes an MA or AMP applicant is not receiving medical benefits from another state unless evidence suggests otherwise. BEM 222, p. 2. Upon approval, the Department notifies the other state's agency of the effective date of the client's medical coverage in Michigan. BEM 222, p. 2.

At the hearing, the Department presented evidence to show that the Respondent failed to notify the Department timely that two of the Respondent's children no longer resided in Michigan, which caused an overissuance.

First, the Department presented Respondent's application dated February 13, 2012, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 9-46.

Second, the Department presented out-of-state correspondence dated April 23, 2013, which stated the both children began receiving benefits (FAP and MA) in Pennsylvania on September 1, 2012. See Exhibit 1, p. 47. The State of Pennsylvania also provided a case comments/documentation history regarding the children's mother. On September 20, 2012, Pennsylvania added both children on the mother's FAP benefits and opened their MA benefits. See Exhibit 1, p. 48. Then, on April 19, 2013, the mother verified the children resided with her in Pennsylvania. See Exhibit 1, p. 48. Subsequent to this date, there was back and forth correspondence in which the children moved back into the Respondent's home for the summer and then back to the mother's home. See Exhibit 1, p. 48.

Additionally, the Department provided school records to indicate the children were enrolled in Pennsylvania schools on or around August 28, 2012 to October 9, 2012. See Exhibit 1, pp. 49-50.

Third, the Department provided correspondence from the Respondent dated January 4, 2013, which informed the Department the children moved out-of-state on December 25, 2012. See Exhibit 1, p. 51.

Based on the foregoing information and evidence, Respondent failed to notify the Department timely that two of the Respondent's children no longer resided in Michigan, which caused an overissuance. Respondent indicated that his children moved out-of-state on December 25, 2012; however, the evidence presented that the children moved out-of-state in September 2012. See Exhibit 1, pp. 47-51. As such, the evidence is persuasive that Respondent's two children were not Michigan residents during the OI period. See BEM 211, pp. 2-3 and BEM 220, pp. 1-2.

Moreover, the evidence presented that the children received MA benefits from more than one state (Michigan and Pennsylvania). See Exhibit 1, pp. 47-51. This also suggests that an OI is present for MA benefits because Respondent failed to update the children's residency information for the purpose of the children receiving MA benefits from more than one state (Michigan and Pennsylvania). See BEM 222, pp. 1-2. In summary, there is an MA overissuance present in this case based on client error. See BAM 710, pp. 1-2.

The Department determined that the OI period began on September 1, 2012. See Exhibit 1, p. 3. It is found that the Department applied the inappropriate OI begin date and the begin date is October 1, 2012. See BAM 710, p. 1 and BAM 715, pp. 4-5.

In establishing the OI amount, BAM 710 states that for an OI due to any other reason, the OI amount is the amount of MA payments. See BAM 710, p. 2. The Department presented a summary of the MA premiums paid behalf of the two children from September 2012 to January 2013, which totaled \$5,464.88. See Exhibit 1, pp. 53-54. However, as stated above, the OI period began in October 2012, thus the issuance amount of \$1,103.22 for September 2012 is subtracted from the total OI amount sought. Also, \$11.78 for March 2012 (See Exhibit 1, p. 54) is subtracted from the total OI amount sought and it is unclear why the Department included this payment in the OI time period. See Exhibit 1, pp. 53-54. Nevertheless, the Department is entitled to recoup \$4,349.88 of MA benefits it issued to Respondent/children for October 1, 2012 to January 31, 2013.


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.
2. Respondent did did not receive an OI of program benefits in the amount of \$4,349.88 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- reduce the OI to \$4,349.88 for the period October 1, 2012 to January 31, 2013, and initiate recoupment procedures in accordance with Department policy.


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

Date Signed: **11/18/2014**

Date Mailed: **11/18/2014**

EJF / cl

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]