

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

**IN THE MATTER OF:**

██████████  
██  
██

Reg. No.: 14-005646  
Issue No.: 3005  
Case No.: ██████████  
Hearing Date: October 15, 2014  
County: OAKLAND (03)

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

**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 October 15, 2014, from Detroit, Michigan. The Department was represented by ██████████, 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 Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance (OI) of Medical Assistance Program (MA) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving benefits for 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 July 1, 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 benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in her residence 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's OIG indicates that the time period it is considering the fraud period is March 1, 2014 through May 31, 2014 (fraud period).
7. During the fraud period, Respondent was issued \$2,550.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. During the fraud period, Respondent was issued \$3,157.08 in 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 FAP benefits in the amount of \$2,550.00.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$3,157.08.
11. This was Respondent's first alleged IPV.
12. 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 (July 2013), p. 12.

### **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 (July 2013), 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 alleged that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for 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 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 2013), p. 4.

At the hearing, the Department established that from January 6, 2014 through April 23, 2014, Respondent used FAP benefits issued by the State of Michigan exclusively in the state of Mississippi. 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 contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on November 13,

2013 in which Respondent acknowledged that she had received the Information Booklet advising her regarding Things You Must Do which explained reporting change of addresses and reporting change in residency. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits. The Department provided Respondent's transaction history beginning December 18, 2013. The transaction history revealed that Respondent used her FAP benefits in Michigan until January 3, 2014. There was no evidence provided that Respondent used her FAP benefits out of state from her date of application on November 13, 2013 through her last usage in Michigan on January 3, 2014. The Department did not provide any evidence that Respondent reapplied for Michigan issued FAP benefits while out of state or that she affirmatively communicated false information to the Department regarding her place of residence. Accordingly, it is found that the Department did not establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. 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 has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

### **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 a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP program.

### **FAP Overissuance**

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 Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident.

The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (July 2013), p. 6; BAM 705 (July 2013), p. 6. At the hearing, the Department alleged that the State of Michigan issued a total of \$2,550.00 in FAP benefits to Respondent from March 1, 2014 through May 31, 2014. The Department further alleged that Respondent was eligible for \$0.00 in FAP benefits during this period.

In support of its contention that Respondent was overissued FAP benefits, the Department presented Respondent's FAP transaction history showing her use of FAP benefits issued by the State of Michigan exclusively in Mississippi beginning January 6, 2014 through April 23, 2014. Further, the Department established that Respondent received FAP benefits issued by the State of Michigan in March 2014 in the amount of \$900.00; April 2014 in the amount of \$900.00 and May 2014 in the amount of \$750.00 for a total amount of \$2,550.00. As discussed above, Respondent was no longer eligible for FAP benefits after she resided outside Michigan for more than 30 days. By March 1, 2014, it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p 2. Therefore, the Department has established it is entitled to recoup the \$2,550.00 in FAP benefits it issued to Respondent from March 1, 2014 through May 31, 2014.

### **MA Overissuance**

The Department also alleged that Respondent was ineligible for MA benefits for March 1, 2014 through May 31, 2014 because she 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.

Additionally, the Department alleged that Respondent received an OI of MA benefits in the amount of \$3,157.08. 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. [Emphasis added]. In this case, Respondent applied for FAP benefits on November 13, 2013 and used her FAP benefits in Michigan until January 3, 2014. The Department failed to present any evidence that Respondent gave incorrect or incomplete information after the date of application. Further, the Department testified that Respondent never used her MA benefits while residing out of state. Accordingly, it is found that the Department failed to meet its burden and therefore failed to establish that Respondent received an OI of MA benefits from March 1, 2014 through May 31, 2014.

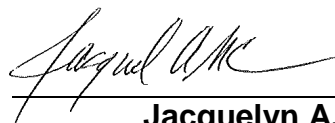
### **DECISION AND ORDER**

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 \$2,550.00.
3. The Department has not established that Respondent received an OI of MA program benefits from March 1, 2014 through May 31, 2014.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$2,550.00 in accordance with Department policy relating to an OI of FAP benefits from March 1, 2014 through May 31, 2014.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



**Jacquelyn A. McClinton**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **11/5/2014**

Date Mailed: **11/5/2014**

JAM / 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.

