

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

**IN THE MATTER OF:**

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

Reg. No.: 14-017380  
Issue No.: 1005; 3005  
Case No.: ██████████  
Hearing Date: April 15, 2015  
County: MACOMB-DISTRICT 36  
(STERLING HTS)

**ADMINISTRATIVE LAW JUDGE: Eric Feldman**

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and 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 April 15, 2015, 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) and Family Independence Program (FIP) 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 FAP and FIP 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 December 11, 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 FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residence.
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 FAP fraud period is July 1, 2013 to December 31, 2013 (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the FIP fraud period is July 1, 2013 to February 28, 2014 (FIP fraud period).
8. During the fraud period, Respondent was issued [REDACTED] in FAP/FIP 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/FIP benefits in the amount of [REDACTED].
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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Health and Human Services Program Administrative Manuals (PAM), Department of Health and Human Services Program Eligibility Manual (PEM), and Department of Health and 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 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 \$500 or more, **or**
  - the total OI amount is less than \$500, **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 (October 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 or CDC provider 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.

To be eligible, a person must be a Michigan resident. BEM 220 (July 2013), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (July 2013) p. 3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 3.

For FIP cases, a person is a resident if all of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

BEM 220, p. 1.

For FIP cases, a temporarily absent person is considered to be living in the home when all of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP eligibility determination group (EDG) before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.

BEM 210 (July 2013), pp. 3-4.

In this case, the Department alleges that Respondent committed an IPV of her FAP/FIP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP/FIP benefits while out-of-state.

First, the Department presented Respondent's application dated January 10, 2013, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 11-36.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1, pp. 39-42. The FAP transaction history showed that from May 18, 2013 to January 31, 2014, Respondent used FAP benefits issued by the State of Michigan out-of-state in New York. See Exhibit 1, pp. 39-42.

Third, the Department presented out-of-state correspondence, which indicated that Respondent received Medical Assistance (MA) benefits from July 11, 2014, ongoing and her Public Assistance (PA) application was rejected on October 22, 2013. See Exhibit 1, pp. 43-44.

Fourth, the Department presented Respondent's LexisNexis report, which reported a out-of-state address in New York. See Exhibit 1, pp. 49-53.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she was in Michigan. Furthermore, there was no evidence to establish that Respondent had moved out-of-state, such as a residential lease or employment. It's unknown if Respondent was caring for someone, attending school, or seeking work.

Moreover, the Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the FAP transaction history/LexisNexis report/out-of-state inquiry. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP/FIP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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. 16. 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 has not satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent not is subject to a disqualification under the FAP/FIP program. BAM 720, p. 16.

### **FAP Overissuance**

As stated previously, the Department failed to show that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

Based on the FAP transaction history, it is persuasive evidence that Respondent was not a Michigan resident. See BEM 220, p. 1. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. Moreover, the FAP transaction history shows that Respondent was using benefits out-of-state for more than thirty days. See BEM 212, p. 3. This established that Respondent is not temporarily absent from her group and she was was not eligible for FAP benefits. Therefore, a client error is present in this situation because Respondent failed to notify the Department of her change in residency. See BAM 715, p. 1.

Applying the OI begin date policy and in consideration of the out-of-state use that began on May 18, 2013, the Department determined that the OI period began on July 1, 2013. See Exhibit 1, pp. 4 and 39. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

Additionally, 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 715, p. 6.

In establishing the OI amount, the Department presented an Eligibility Summary showing that Respondent was issued FAP benefits by the State of Michigan from July 2013 to December 2013, which totaled [REDACTED]. See Exhibit 1, p. 47. However, the Department's OIG report indicated the total OI amount is [REDACTED]. See Exhibit 1, p. 4. The Department miscalculated the total OI amount. Thus, the Department is only entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from July 1, 2013 to December 31, 2013.

### **FIP Overissuance**

As stated previously, the FAP overissuance concluded there was persuasive evidence that Respondent was not a Michigan resident. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. Thus, a client error is also present for the FIP benefits because she failed to report a change in residency in order to continue receiving FIP benefits from Michigan. See BAM 715, p. 1; BEM 210, pp. 3-4; and BEM 220, p. 1. Respondent was not eligible for FIP benefits and was overissued FIP benefits for any period she was ineligible to receive FIP benefits.

Applying the client error overissuance period standard and in consideration of the out-of-state use that began on May 18, 2013, the Department determined that the OI period began on July 1, 2013. See Exhibit 1, pp. 4 and 39. It is found that the Department applied the appropriate OI period. See BAM 715, pp. 4-5.

In establishing the OI amount, the Department presented an Eligibility Summary showing that Respondent was issued FIP benefits by the State of Michigan from July 2013 to February 2014 totaling [REDACTED]. See Exhibit 1, p. 45. However, the Department's OIG report indicated the total OI amount is [REDACTED]. See Exhibit 1, p. 4. The Department miscalculated the total OI amount. Thus, the Department is only entitled to recoup [REDACTED] of FIP benefits it issued to Respondent from July 1, 2013 to February 28, 2014. The total OI amount that the Department is entitled to recoup is [REDACTED] from the FAP/FIP programs ([REDACTED]).

### **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 did receive an OI of program benefits in the amount of [REDACTED] from the FAP and FIP benefits.

