

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

**IN THE MATTER OF:**

████████████████████  
██  
██

Reg. No.: 2014-27556  
Issue No(s): 2006; 3005  
Case No.: ██████████  
Hearing Date: May 21, 2014  
County: Wayne (31)

**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 May 21, 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  
 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
  
3. Should Respondent be disqualified from receiving  
 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 February 20, 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 residence.
5. Respondent had no 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 for FAP is May 1, 2011 to January 31, 2012 and the OI period for MA is May 1, 2011 to January 31, 2012.
7. During the fraud period, Respondent was issued \$14,052 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$14,052.
9. This was Respondent's  first  second  third alleged IPV.
10. 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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

☒ The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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.

### **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 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, a person must be a Michigan resident. BEM 220 (April 2011), p. 1.

For FAP cases, 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. 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 (September 2010), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

The Department's OIG indicates that the time period it is considering the fraud period for FAP is May 1, 2011 to January 31, 2012 and the OI period for MA is May 1, 2011 to January 31, 2012. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's redetermination dated May 4, 2011, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1. A review of Respondent's redetermination indicated that she reported a

Michigan address and this document was submitted during the alleged fraud period. See Exhibit 1.

Second, the Department presented Respondent's FAP transaction history. See Exhibit 1. The FAP transaction history showed that from May 10, 2011 to February 8, 2012, Respondent used FAP benefits issued by the State of Michigan out-of-state in Kentucky and Alabama. See Exhibit 1.

Third, the Department presented Respondent's LexisNexis history, which indicated an Alabama address. See Exhibit 1.

Fourth, the Department presented a letter from the Respondent dated September 14, 2009, which indicated that her husband moved to Alabama and that he be removed from the group. See Exhibit 1.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The evidence is sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits. The Department presented evidence to establish Respondent's intent during the alleged IPV usage. The Department presented evidence that Respondent reported a Michigan residence while she was using out-of-state FAP benefits in Kentucky and Alabama. The redetermination dated May 4, 2011, indicated that she reported no change in her Michigan residence/address, which occurred at the beginning of the alleged fraud period or some time after her usage began out of state. See Exhibit 1. This shows that the Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period sometime after her usage began out of state.

In summary, there was clear and convincing evidence that Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. The Department has established that Respondent committed an IPV of FAP 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

### **FAP Overissuance**

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits. Moreover, the FAP transaction history showed that Respondent did not reside in Michigan. Thus, she was was not eligible for FAP benefits and was overissued FAP benefits for any period she was ineligible to receive FAP benefits.

Applying the OI begin date policy and in consideration of the out-of-state use that began on May 10, 2011, the Department determined that the OI period began on May 1, 2011. See Exhibit 1. It is found that the Department applied the inappropriate OI begin date and the begin date is June 1, 2011. See BAM 720, p. 7.

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 720, p. 6.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from May 2011 through January 2012, which totaled \$8,138. See Exhibit 1. However, as stated above, the OI period began in June 2011, thus the issuance amount of \$866 for May 2011 is subtracted from the total OI amount sought. See Exhibit 1. Therefore, the Department is entitled to recoup \$7,272 of FAP benefits it issued to Respondent from June 1, 2011 to January 31, 2012.

### **MA 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 her MA benefits. The Department alleges that she failed to notify the Department that she no longer resided in Michigan but her MA benefits continued to pay her group member's health premiums while they were out of state. The Department's OIG indicates that the time period it is considering the OI period is May 1, 2011 to January 31, 2012.

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

- He lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely.
- He 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, 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 (January 2011), pp. 2-3.

As stated previously, a FAP IPV is present in this situation because Respondent failed to notify the Department of her change in residency and an OI amount was established. See BAM 720, p. 6. The evidence is persuasive that Respondent was not a Michigan resident. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. See Exhibit 1 and BEM 220, pp. 1-2. Moreover, the FAP transaction history shows that Respondent is not temporarily absent from her group and she was was not eligible for MA benefits. See BEM 211, pp. 2-3.

Based on this information, it is also persuasive that the additional group members (Respondent's children) were not Michigan residents and not temporarily absent from their group. See BEM 220, pp. 1-2 and BEM 211, pp. 2-3. The evidence presented that

the additional group members resided with their mother (the Respondent) and there was no evidence to contradict that the additional group members were no longer part of the household during alleged OI period. See Exhibit 1. Therefore, an MA client error is present in this situation because Respondent failed to notify the Department of her and the additional group members' change in residency. See BAM 710, p. 1.

The Department determined that the OI period began on May 1, 2011. See Exhibit 1. It is found that the Department applied the inappropriate OI begin date and the begin date is June 1, 2011. See BAM 710, p. 1.

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 on the group members' and/or Respondent's behalf from May 2011 to January 2012, which totaled \$5,914. See Exhibit 1. It should be noted that the MA total in the packet was \$5,919, however, the lesser amount will be used. See Exhibit 1. However, as stated above, the OI period began in June 2011, thus the issuance amount of \$923 for May 2011 is subtracted from the total OI amount sought. See Exhibit 1. The \$923 was calculated based on all premiums paid on behalf of the group members in May 2011. See Exhibit 1. Thus, the Department is entitled to recoup \$4,991 of MA benefits it issued to Respondent for June 1, 2011 to January 31, 2012.

### **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 established by clear and convincing evidence that Respondent  did  did not commit an intentional program violation (IPV).
2. Respondent  did  did not receive an OI of program benefits in the amount of \$12,263 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

- reduce the OI to \$12,263 for the FAP period of June 1, 2011 to January 31, 2012 (\$7,272 FAP OI amount) and the MA period for June 1, 2011 to January 31, 2012 (\$4,991 MA OI amount), and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from  
 FIP  FAP  SDA  CDC for a period of  
 12 months.  24 months.  lifetime.



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

Date Signed: May 28, 2014

Date Mailed: May 28, 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.

EJF/cl

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