

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014-27682
Issue No(s): 3005
Case No.: ██████████
Hearing Date: May 22, 2014
County: Monroe (00)

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 22, 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 21, 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 is June 1, 2013 to November 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,189 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.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,189.
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 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.

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's OIG indicates that the time period it is considering the fraud period is June 1, 2013 to November 30, 2013. 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.

Moreover, the Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,189 during the alleged fraud period. 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. However, the Department applied the inappropriate OI begin date of June 1, 2013. The Department presented Respondent's FAP transaction history. See Exhibit 1. The FAP transaction history showed that from June 3, 2013 to November 17, 2013, Respondent used FAP benefits issued by the State of Michigan out of state in North Carolina. See Exhibit 1.

Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the RS, whichever is later. BAM 720, p. 7. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 720, p. 7. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7; See also BAM 715 (May 2014), pp. 4-5.

Applying the OI begin date policy and in consideration of the out-of-state use that began on June 3, 2013, the Department determined that the OI period began on June 1, 2013. See Exhibit 1. It is found that the Department applied the inappropriate OI begin date and the begin date is July 1, 2013. See BAM 720, p. 7 and BAM 715, pp. 4-5.

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 June 2013 to November 2013, which totaled \$1,189. See Exhibit 1. However, as stated above, the OI period began in July 2013, thus the issuance amount of \$200 for June 2013 is subtracted from the total OI amount sought. See Exhibit 1. Therefore, the total OI amount would be \$989 for the time period of July 1, 2013 to November 30, 2013.

See Benefit Summary Inquiry, Exhibit 1. This OI amount is less the \$1,000 threshold that an OIG agent can request IPV hearings. See BAM 720, pp. 12-13. Because the Department cannot establish that the OI amount threshold is present in this case in order to pursue an IPV hearing, Respondent is not subject to an OI or IPV disqualification from the FAP program. See BAM 720, pp. 12 – 13 and 16.

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 \$1,189 or \$989 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.



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

Date Signed: June 2, 2014

Date Mailed: June 2, 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]