

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

IN THE MATTER OF:

██████████
████████████████████
██

Reg. No.: 2014-30744
Issue No.: 2005, 3005, 4005
Case No.: ██████████
Hearing Date: April 23, 2014
County: Shiawassee

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 23, 2014, from Detroit, Michigan. The Department was represented by ██████████
██

Participants on behalf of Respondent included: .

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
 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 January 15, 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 benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in residency to the Department.
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 July 1, 2013, to December 31, 2013 (fraud period).
7. The Department alleges that, during the fraud period, Respondent was issued by the State of Michigan (i) \$1,178 in FAP benefits, (ii) \$7,087.50 in MA benefits, and (iii) \$1,000 in SDA benefits.
8. The Department alleges that Respondent was eligible to \$0 in FAP, MA and SDA benefits during the fraud period period.
9. The Department alleges that Respondent received an OI totaling \$9,265.50 consisting of (i) \$1,178 in overissued FAP benefits, (ii) \$7,087.50 in overissued MA benefits, and (iii) \$1,000 in overissued SDA benefits.
10. This was Respondent's first second third alleged FAP IPV and SDA IPV.
11. 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 combined 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; 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 (July 2013 and 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 because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued Department benefits while out of state. To be eligible benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 2013), p. 1. For FAP benefits, 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. For SDA and MA, a person is a resident if she is living in Michigan, except for a temporary absence, and intends to remain in the State permanently or indefinitely. BEM 220, pp. 1, 2. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP, SDA or MA benefits issued by the State of Michigan. BEM 212 (July 2013 and October 2013), p. 3; BEM 214 (July 2013), p. 2; BEM 211 (July 2013), p. 3.

The Department established that, from May 13, 2013 to November 16, 2013, Respondent used her FAP benefits issued by the State of Michigan exclusively out of state [REDACTED]. This evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for State benefits. However, 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.

To support its case that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on July 12, 2012. While this application was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, it does not establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning her out-of-state move for the purpose of maintaining her Michigan benefit eligibility. Thus, the Department has failed to establish that Respondent committed an IPV of Department programs.

Disqualification

A court or hearing decision that finds a client committed an 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. 16.

In this case, the Department failed to satisfy its burden of showing that Respondent committed an IPV. Therefore, Respondent is **not** subject to a disqualification from the either the FAP or SDA program.

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 Respondent received an OI of FAP, SDA and MA benefits resulting from her receipt of Michigan-issued benefits while no longer a State resident. Clients are not eligible for Department benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of State from May 13, 2013, to November 16, 2013. In the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan. Thus, she was was not eligible for State benefits.

Amount of SDA and FAP OI

The amount of a FAP or SDA OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2013), p. 6; BAM 705 (July 2013), p. 6.

In this case, the Department alleges that Respondent was overissued \$1,178 in FAP benefits for the period between July 1, 2013, and December 31, 2013. (Although the

Department indicated in its hearing summary that the fraud period was June 2013 to November 2013, the OIG's investigative report, the repayment sent to Respondent and the documentation included in the file all support a fraud period of July 2013 to December 2013 for FAP). The Department presented a benefit summary inquiry to support FAP issuances during this period totaling \$1,178. Because the Department properly calculated the first month of the OI period (see BAM 720, p. 7) to begin July 2013 and established the amount issued during the fraud period, the Department is entitled to recoup or collect \$1,178 from Respondent for FAP benefits it issued to her between July 1, 2013, and December 31, 2013. To the extent there are any funds remaining on the electronic benefits transfer (EBT) card onto which Respondent's FAP benefits were deposited, the Department must expunge those funds from the card and apply those benefits towards the FAP OI. BAM 725 (May 2014), p. 9.

The Department failed to present any documentary evidence establishing that it issued SDA benefits to Respondent. As such, the Department has failed to establish that Respondent received an OI of SDA benefits.

Amount of MA OI

The Department may initiate recoupment of an MA overissuance only 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. Because Respondent failed to report an out-of-state move, the error resulting in overissued MA benefits in this case was a client error.

The amount of an MA OI for an OI due to any reason other than unreported income or a change affecting need allowances is the amount of MA payments. BAM 710, pp. 1-2. The Department established that the State of Michigan spent \$7,087.50 to provide Respondent with MA benefits from July 2013 through November 2013. Thus, the Department was also entitled to recoup or collect from Respondent the \$7,087.50 in MA premium payments it made on Respondent's behalf between July 2013 and November 2013.

In total, the Department is entitled to recoup or collect from Respondent \$8,265.50 in overissued FAP and MA benefits.

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, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent received an OI of program benefits in the amount totaling \$8,265.50 consisting of (i) \$1,178 in overissued FAP benefits and (ii) \$7,087.50 in overissued MA benefits.
3. Respondent did not receive an OI of SDA benefits.

The Department is ORDERED to reduce the OI to \$8,265.50 for the period July 1, 2013, to December 31, 2013, and initiate recoupment/collection procedures in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 29, 2014

Date Mailed: April 30, 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.

ACE/pf

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