

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

IN THE MATTER OF:

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

Reg. No.: 2014-4668
Issue Nos.: 2052, 3052
Case No.: ██████████
Hearing Date: December 2, 2013
County: Oakland (63-03)

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 December 2, 2013 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 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 July 26, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by receiving Michigan-issued benefits when no longer a Michigan resident.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits under FAP.
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 address changes.
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 September 1, 2012, to March 31, 2013.
7. During the alleged fraud period, Respondent was issued \$2,569 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 \$2,569.
9. During the alleged fraud period, the Department paid \$3,803.14 in FIP FAP SDA CDC MA benefits on Respondent's and her group's behalf, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$3,803.14.
11. This was Respondent's first second third alleged FAP IPV.
12. 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 (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 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 for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2012 and March 2013), p. 1. 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. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (April 2012 and November 2012), pp. 2-3.

The Department established that from July 5, 2012, to March 27, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively out of state in [REDACTED]. 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 this case, the Department presented an application Respondent submitted to the Department on April 12, 2012. While the 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 FAP eligibility. Therefore, the Department has failed to satisfy its burden of showing that Respondent committed an IPV of her FAP benefits.

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 (October 2009 and 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 that Respondent committed a FAP IPV. Accordingly, Respondent is **not** subject to a disqualification from the FAP program.

Overissuance

The Department has alleged an OI of FAP and MA benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer residing in Michigan. 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 a FAP 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), pp. 1, 6; BAM 705 (July 2013), p. 6. At the hearing, the Department established that the State of Michigan issued \$2,569 in FAP benefits to Respondent from September 1, 2012, through March 31, 2013. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

In support of its FAP case, the Department presented Respondent's FAP transaction history showing her use of FAP benefits issued by the State of Michigan exclusively out of state beginning July 5, 2012. As discussed above, Respondent was no longer eligible for FAP benefits after she resided outside Michigan for more than 30 days. See BEM 212, pp. 2-3. Therefore, the Department has established it is entitled to recoup the \$2,569 in FAP benefits it issued to Respondent between September 1, 2012, and March 31, 2013.

The Department also sought to recoup an MA overissuance. 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. 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 presented documentation establishing that the State of Michigan paid \$3,803.14 in MA premiums on Respondent's group's behalf from September 1, 2012, to March 31, 2013. Because Respondent was out of state, she was not eligible for any MA coverage provided by the Department. BEM 220, p. 1. Because Respondent failed to report an out-of-state move, the error was a client error. Thus, the Department was also entitled to recoup the \$3,803.14 in MA benefits it issued on Respondent's behalf.

Therefore, the Department is entitled to recoup from Respondent the 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. Respondent did did not commit a FAP IPV by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$2,569 from the following program(s) FIP FAP SDA CDC MA.
3. Respondent did did not receive an OI of program benefits in the amount of \$3,803.14 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,569 for the FAP OI and \$3,803.14 for the MA OI in accordance with Department policy.



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

Date Signed: December 3, 2013

Date Mailed: December 4, 2013

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.

2014-4668/ACE

ACE/pf

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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