

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

IN THE MATTER OF:

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

Reg. No.: 2014-4669
Issue No.: 2005;3005
Case No.: ██████████
Hearing Date: December 9, 2013
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 9, 2013, 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 July 29, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report an out-of-state move and continuing to receive and use Michigan-issued benefits while out of state.
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 household circumstances, such as a change 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, 2012, to March 31, 2013, for FAP and June 1, 2012, to April 30, 2013, for MA. (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued [REDACTED] 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. During the fraud period, the Department alleges that Respondent was issued [REDACTED] 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.
9. The Department alleges that Respondent received an OI in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☒ MA benefits in the amount of [REDACTED] for FAP and [REDACTED]8 for MA.
10. This was Respondent's ☒ first ☐ second ☐ third alleged 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 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. 10.

Dismissal of Respondent's MA IPV Hearing

In this case, the Department alleged that Respondent committed an IPV because he failed to report a change in residency and continued to receive Michigan-issued FAP

benefits while out of state. Before the hearing was held, the Notice of Hearing mailed to Respondent via first class mail at the address identified by the Department as the last known and most recent address was returned by the United States Postal Service as undeliverable, with no forwarding address. Department policy dictates that when correspondence sent to Respondent concerning an IPV is returned as undeliverable, the hearing cannot proceed with respect to any program other than FAP. BAM 720, p 10. Thus, the Department's request for hearing concerning Respondent's MA program benefits is dismissed for lack of jurisdiction. The hearing proceeded with respect to the alleged FAP IPV.

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. 6; 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 his FAP benefits because he failed to notify the Department that he 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. For FAP purposes, 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.

At the hearing, the Department established that from April 14, 2012, to March 13, 2013, Respondent used FAP benefits issued by the State of Michigan exclusively out of state, in Alabama and Texas. 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 support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on May 26, 2011, which indicates that he is homeless. While this may be sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances, it does not establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning his out-of-state move for the purpose of maintaining his Michigan FAP eligibility.

The Department also presented a Lexis Nexis summary which indicates that Respondent had an address associated with his name in the state of Alabama during the alleged fraud period, however, after further review, there are also addresses associated with Respondent's name in the state of Michigan during the alleged fraud period.

Based on the foregoing, the Department did not present sufficient evidence to establish Respondent's intent other than Respondent's out-of-state use. Therefore, 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 eligibility, the Department has failed to establish 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, 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 has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

Overissuance

The Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident. 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 a total of [REDACTED] in FAP benefits to Respondent from June 2012 through March 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 his use of FAP benefits issued by the State of Michigan exclusively out of state during the period at issue. As discussed above, Respondent was no longer eligible for FAP benefits after he 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 [REDACTED] in FAP benefits it issued to Respondent between June 1, 2012, and March 31, 2013.

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. Respondent ☐ did ☒ did not commit an IPV by clear and convincing evidence.
2. Respondent ☒ did ☐ did not receive an OI of program benefits in the amount of [REDACTED] from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 27, 2013
Date Mailed: December 27, 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.

ZB/tm

cc:

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