

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-012496
Issue No.: 3005, 1005
Case No.: [REDACTED]
Hearing Date: February 26, 2015
County: WAYNE-DISTRICT
(GRAND RIVER/WAR)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three way telephone hearing was held on February 26, 2015, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: the Respondent [REDACTED].

ISSUES

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP), Food Assistance Program (FAP) and 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 benefits for Family Independence Program (FIP), Food Assistance Program (FAP) and Medical Assistance?

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 October 3, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP Cash Assistance, FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes.
5. Respondent did not have an 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 FAP (February 1, 2014 through July 31, 2014) and FIP (February 1, 2014 through June 30, 2014 (fraud period).
7. During the fraud period, Respondent was issued \$2982 in FAP and \$2335 in FIP 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 and FAP benefits in the amount of \$5320.
9. The Department sought an overissuance of MA premiums paid in the amount of \$2,235 but did not provide any MIGS issuance summaries to establish the overissuance of MA benefits.
10. This was Respondent's first alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k. .

Effective October 1, 2014 The Department's OIG requests IPV hearings for the following cases:

- **Willful overpayments of \$500.00 or more under the AHH program.**
- **FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or**
 - **the total amount is less than \$500, 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.**

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 (5/1/14), 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. 11.

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.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is 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 (April 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, pp. 2-3.

For FIP residency eligibility BEM 220 provides:

FIP, SDA

A person is a resident if **all** of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.

- Intends to remain in the state permanently or indefinitely. BEM 220 (July 1, 2014) p.1.

In this case, the Department seeks an intentional program violation for both the FIP and FAP programs alleging that the Respondent used her FAP benefits outside Michigan in the state of Illinois and also used her FIP benefits while no longer a resident of Michigan and thus was not entitled to receive these benefits. The fraud period alleged by the Department is FAP (February 1, 2014 through July 31, 2014) and FIP (February 1, 2014 through June 30, 2014 (fraud period). Exhibit 1, pp. 3. It must be noted that the Respondent began using her FAP benefits in Illinois beginning July 20, 2014 but the Department's summary sought benefits only from February 1, 2014. The Respondent used her benefits in Michigan on August 21, 2013 and October 5, 2013 and for a few days December 30, 2013 through January 12, 2014; however, all these months are not included in the overissuance the Department's seeks as they are prior to February 1, 2014. They also do not establish that the Claimant was living in Michigan at the time as all purchases before and after these dates were in Illinois.

During the hearing the Claimant testified that she was unstable and that she had contacted her worker to stop her benefits. No change reports were received to stop benefits or to provide a change in address. A Redetermination completed in October 3, 2013 did not report any change in address although benefits for FAP were being used exclusively in Illinois. Even if a change was reported the Respondent continued to use her benefits in Illinois.

Based upon the evidence presented it is clear Respondent failed to report a change in address to the Department causing her to receive Michigan FAP benefits while she was out of state in in Illinois as shown by her EBT card usage. Exhibit 1, pp. 46-50. The out-of-state use for 12 months clearly established that Respondent was not a resident of Michigan. The Department provided the following proofs. The Claimant began out-of-state use exclusively of her FAP benefits in July 2013.

Based upon the evidence presented, the Department has established that the Respondent committed an IPV of her FAP benefits when she failed to report her change of address without at any time advising the Department of her leaving the state of Michigan and failing to notify the Department. Additionally based upon her FAP usage it is clear that the Respondent was using her FIP benefits in Illinois also during the period. Based upon the out-of-state use of both FIP and FAP benefits it is determined that the Respondent committed an IPV of her FIP and FAP benefits. The evidence is sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for either FIP or FAP benefits. 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). The Department presented evidence to establish Respondent's intent during the alleged IPV usage.

The Department did not meet its burden of proof to demonstrate an IPV or an overissuance of MA benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 2. 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/13), 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. Exhibit 1 pp. 1.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FIP benefits. Therefore, Respondent is disqualified from FIP benefits for 12 months. BAM 720, p. 16. Exhibit 1 pp. 1.

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.

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 client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (October 1 2014), p. 6; BAM 705 (May 2014), p. 6.

Clients are not eligible for FAP and FIP benefits if they do not reside in Michigan. BEM 220, (7/1/14) pp. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from July 20, 2013 through July 31, 2014. In the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan and was not eligible for FAP or FIP benefits issued by the Department.

At the hearing, the Department presented Respondent's FAP transaction history that established that her history showed that from from July 20, 2013 through July 31, 2014, Respondent used FAP benefits issued by the State of Michigan out of state in Illinois and was no longer living in Michigan. Likewise as the Claimant was not a resident of Michigan, the Respondent was no longer entitled to receive FIP benefits. To be eligible, a person must be a Michigan resident. BEM 220, p. 1. For FAP cases, a

person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. For Fip Cases the recipient is a resident if all the following conditions are met:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely. BEM 220 (July 1, 2014) p.1.

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

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.

As the Department seeks an overissuance for February ongoing and did not seek benefit overissuance beginning in July 2013, the Department has complied with the correct beginning month and could have sought the FIP and FAP overissuances to begin earlier than it did.

Applying the above standard and in consideration of the out-of-state use that began on July 20, 2013, the Department determined that the OI period began on February 1, 2013 for both FIP and FAP benefits. See Exhibit 1. It is found that the Department applied the appropriate OI begin date. 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 February 1, 2014 through July 31, 2014 in the amount of \$2985. In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FIP benefits by the State of Michigan from February 1, 2014 through June 30, 2014 in the amount of \$2335. Exhibit 1 pp. 60-66.

Thus, the Department is entitled to recoup \$5320 of FAP and FIP benefits combined for the above periods.

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:

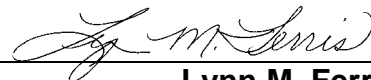
1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$2985 from the FAP benefit Program.
3. Respondent did receive an OI of program benefits in the amount of \$2335 from the FIP benefit program.

The Department did not establish an overissuance for MA benefits and it is ordered to delete the overissuance of \$2235 for MA overissuance and its claim is DISMISSED.

The Department is ORDERED to initiate recoupment procedures for the amount of \$5320 in accordance with Department policy for overissuances in the FIP and FAP program.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

It is FURTHER ORDERED that Respondent be disqualified from FIP for a period of 12 months.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/27/2015**

Date Mailed: **3/27/2015**

LMF / cl

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

