

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015066
Issue No.: 3005, 1005
Case No.: [REDACTED]
Hearing Date: April 1, 2015
County: Oakland (2) Madison Hts

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

**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 Regulations, particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a 3-way telephone hearing was held on April 1, 2015, from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED] by telephone.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance Program (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 Food Assistance Program (FAP) benefits?

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 November 7, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program FAP benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on April 20, 2013, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning in July 2013.
8. The OIG indicates that the time period they are considering the fraud period is July 1, 2013, through April 30, 2014.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
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.
12. The Department alleged that Respondent received overissuance of MA benefits in the amount of \$ [REDACTED] due to capitation costs expended by the State of Michigan.

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 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 of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 (October 2013)

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 (October 2013), p. 6; BAM 720

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,(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, with regard to FAP, Respondent used her BRIDGE card in the state of [REDACTED] and admitted that she was living in the State of [REDACTED] with no intention to return to Michigan. Respondent testified that family members may have used her BRIDGE card, but that she did not. Respondent's testimony was less than credible. Divulging her access number to family members was also an actionable violation at minimum. The Department presented sufficient proof that Respondent committed an IPV for the FAP Program.

With regard to the MA program, Respondent did not use Michigan Medicaid for herself or her children while she resided in [REDACTED]. Respondent obtained Medicaid for her child in [REDACTED]. Since she did not use MA benefits, the undersigned Administrative Law Judge cannot find that the Department presented clear and convincing proof that Respondent purposely withheld information that she left Michigan to maintain MA benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720. 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.

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 2013). 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.

In this case, this was Respondent's first instance of an IPV for the FAP program; therefore, a one-year disqualification is required.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2013).

In this case, Respondent received \$ [REDACTED] in FAP benefits that she was not entitled to; therefore, the Department can recoup that amount.


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 established by clear and convincing evidence that Respondent committed an IPV for the FAP program.
2. The Department has not established by clear and convincing evidence that Respondent committed an IPV for the MA program.
3. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s): FAP.

The Department is ORDERED to delete the OI and cease any recoupment action for the MA program and initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy for the FAP program.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for one year.



Aaron McClintic
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/6/2015**

Date Mailed: **4/6/2015**

AM/jaf

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.

cc:

