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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 14-016859
Issue No.: 2005, 3005
Case No.: [redacted]
Hearing Date: April 02, 2015
County: WASHTENAW (DISTRICT 20)

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

## 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 2, 2015, from Lansing, Michigan. The Department was represented by [redacted], 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 Food Assistance Program (FAP) 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 Food Assistance Program (FAP)?

## 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 December 5, 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 FAP and MA benefits issued by the Department.

4. Respondent acknowledged on an application for assistance dated October 22, 2013, the responsibility to report any change of residency to the Department.

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 February 1, 2014, through May 31, 2014.

7. During the fraud period, Respondent was issued [redacted] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [redacted] in such benefits during this time period.

8. The Department alleges that Respondent received an OI in MA benefits in the amount of [redacted]

9. During the fraud period, Respondent was issued [redacted] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [redacted] in such benefits during this time period.

10. The Department alleges that Respondent received an OI in FAP benefits in the amount of [redacted]

11. This was Respondent's first alleged IPV.

12. 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 Food Assistance Program (FAP) 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. .

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 $500 or more, **or**
  - the total OI 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.

BAM 720 (May 1, 2014), p. 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 (May 1, 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.

**Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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 (July 1, 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.

**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.

To be eligible for Food Assistance Program (FAP) or Medical Assistance (MA) benefits, a person must be a Michigan resident. 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. Department of Human Services Bridges Eligibility Manual (BEM) 220 (July 1, 2014), p 1.

In this case, the Respondent acknowledged on an application for assistance dated October 22, 2013, the responsibility to report any change of residency to the Department as well as the receipt of benefits from another state. The Respondent was a Food Assistance Program (FAP) recipient from February 1, 2014, through May 31, 2014. The Respondent began using his FAP benefits in Florida on December 19, 2013, and continued to use them exclusively in Florida through June 1, 2014. The exclusive use of benefits in another state is evidence that supports a finding of a lack of intent to remain a Michigan resident. The Respondent applied for and was approved for food assistance from Florida from March 15, 2014, through May 31, 2014. The receipt of food assistance from another state is evidence that supports a finding of a lack of intent to remain a Michigan resident. If the Respondent had reported a change of residency to Florida, she would not have been eligible for any of the FAP benefits she received during the period of alleged fraud. During the period of alleged fraud, the Respondent also received Medical Assistance (MA) benefits in the form of medical premiums paid by the Department on her behalf. If the Department was aware that the Respondent was not a Michigan resident, the Department would not have paid any of these medical premiums during the period of alleged fraud. The Department has established by clear and convincing evidence that the Respondent intentionally failed to report a change of residency to Florida for the purpose of receiving and maintaining FAP and MA benefits that she would not have been eligible for otherwise. Since the Respondent was concurrently receiving food assistance in Michigan and Florida, a ten-year disqualification period is mandated by Department policy.

## 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.
2. Respondent did receive an OI of program benefits in the amount of [redacted] from the following program(s) MA.

3. Respondent did receive an OI of program benefits in the amount of [redacted] from the following program(s) FAP.

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

5. It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

Kevin Scully
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/7/2015**

Date Mailed: **4/7/2015**

KS/sw

**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.

cc: [redacted]