

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

IN THE MATTER OF:

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██
████████████████████

Reg. No.: 14-009093
Issue No.: 1005; 2006; 3005
Case No.: ██████████
Hearing Date: April 29, 2015
County: WAYNE-DISTRICT 19
(INKSTER)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a three-way telephone hearing was held on April 29, 2015, 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), 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 FAP and FIP 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 August 12, 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, FAP, and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residence.
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 FAP/FIP fraud period is April 1, 2011 to February 29, 2012 (fraud period).
7. The Department's OIG indicates that the time period it is considering the MA OI period is April 1, 2011 to February 29, 2012 (MA OI period).
8. During the fraud period, Respondent was issued ██████ in FAP, FIP, and 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 FAP, FIP, and MA benefits in the amount of ██████.
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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 Department of Human Services) 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 and Nutrition Act of 2008, 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 Department of Human Services) 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 Department of Human Services) 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 (May 2014), pp. 12-13.

As a preliminary matter, the Department attempted to submit additional documents pertaining to the issue of Respondent's FAP transaction history (out-of-state usage), which Department intended to offer as exhibit at the hearing. However, this additional documentation was never part of the original evidence packet that was forwarded to the Respondent on August 12, 2014. See Exhibit 1, p. 3. As such, this Administrative Law Judge (ALJ) refused to accept this evidence based on Respondent never receiving this documentation. Respondent has the right to review the case record and obtain copies

of needed documents and material relevant to the hearing. See BAM 600 (July 2014 and April 2015), pp. 8-11 and 30-31.

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 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.

To be eligible, a person must be a Michigan resident. BEM 220 (April 2011), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if she has 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 (September 2010), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

For FIP cases, a person is a resident if all of the following apply:

- Is not receiving assistance from another state; and
- Is living in Michigan, except for a temporary absence, and
- Intends to remain in the state permanently or indefinitely.

BEM 220, p. 1.

For FIP cases, a temporarily absent person is considered to be living in the home when all of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP eligibility determination group (EDG) before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.

BEM 210 (January 2010), p. 2.

In this case, the Department alleges that Respondent committed an IPV of her FAP/FIP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP/FIP benefits while out-of-state.

First, the Department presented Respondent's redetermination dated February 3, 2011, to show that she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 13-16.

Second, the Department presented Respondent's LexisNexis report, which reported an out-of-state address in Texas. See Exhibit 1, pp. 24-51.

It should be noted that the OIG testified that Respondent was identified by the Electronic Benefits Transfer (EBT) state usage as making FAP benefit transactions in Georgia from April 13, 2011 to March 19, 2012. See Exhibit 1, pp. 1 and 4. However, the Department failed to present any documentation showing of such out-of-state usage.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she was in Michigan. Furthermore, there was no evidence to establish that Respondent had moved out-of-state, such as a residential lease or employment. It's unknown if Respondent was caring for someone, attending school, or seeking work. Department policy does not prohibit out-of-state usage when the individual intends on coming back.

Moreover, the Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the LexisNexis report. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period.

In summary, 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/FIP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent is not disqualified from FAP/FIP benefits for 12 months. BAM 720, p. 16.

FAP/FIP Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error. A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the Department. BAM 715 (July 2014), p. 1.

In this case, the Department only presented Respondent's LexisNexis report and testified that she used her FAP benefits in Georgia from April 13, 2011 to March 19, 2012. However, the Department failed to provide any documentary evidence showing that Respondent no longer resided in Michigan but continued to receive and use Michigan-issued FAP/FIP benefits while out-of-state. Moreover, Department policy does not prohibit out-of-state usage when the individual intends on coming back. The Department failed to demonstrate that Respondent was no longer a Michigan resident during the alleged fraud/OI period. Therefore, there is no FAP/FIP OI present in this case.

MA Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (July 2013), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less.

BAM 710, p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department also alleges that an OI was present for her MA benefits (total group size of four) based on Respondent/group members no longer residing in Michigan. See Exhibit 1, pp. 4 and 11-12. The Department's OIG indicates that the time period it is considering the OI period is April 1, 2011 to February 29, 2012.

For MA cases (non-institutionalized persons), an individual is a Michigan resident if either of the following apply:

- The individual lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely.
- She or a member of the MA fiscal group has entered the state of Michigan for employment purposes, and has a job commitment, or is seeking employment.

BEM 220, pp. 1-2.

For Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA, a person's absence is temporary if for the month being tested:

- His location is known; **and**
- There is a definite plan for him to return home; **and**
- He lived with the group before the absence (**Note:** newborns and unborns are considered to have lived with their mothers); **and**

- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

BEM 211 (January 2011), pp. 2-3.

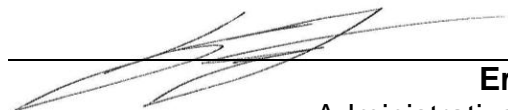
As stated previously, the evidence failed to establish that Respondent was no longer a Michigan resident and therefore, not eligible for FAP/FIP benefits. Thus, a MA client error is also not present in this case as the Department failed to satisfy its burden of showing that Respondent/group members no longer resided in Michigan and therefore, not eligible for 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, if any, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of program benefits in the amount of [REDACTED] from the FAP, FIP, and MA programs.

The Department is ORDERED to delete the OI and cease any recoupment action.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/29/2015**

Date Mailed: **4/30/2015**

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