

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-000738
Issue No.: 3005, 2005
Case No.: [REDACTED]
Hearing Date: May 6, 2015
County: Oakland (4) North Saginaw

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 telephone hearing was held on May 6, 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 FAP and 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 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 January 26, 2015, 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 FAP benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report change 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 fraud period is September 1, 2014, through October 31, 2014, (fraud period).
7. 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and MA benefits in the amount of \$ [REDACTED].
9. This was Respondent's **first** alleged IPV.
10. 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 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.

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.

BAM 720 (October 2014)

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 2014); BAM 720.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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, Respondent used his BRIDGE card in the State of ██████ continuously and was residing in ██████ while he received FAP in Michigan. This was in violation of Department policy and an IPV. This was established by the BRIDGE card use history provided by the Department.

With regard to MA benefits, the Department did not allege that Respondent used his Michigan Medicaid while he resided in ██████. The Department is seeking capitation costs associated with maintaining MA coverage during the time period in question. The undersigned Administrative Law Judge cannot find that the Department established by clear and convincing evidence that the Respondent purposely withheld residency information to maintain Medicaid coverage, therefore no intentional program violation is found for the MA program.

Disqualification

A client who is found to have committed an intentional program violation by a court or hearing decision is disqualified from receiving program benefits. BAM 720. 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. 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.

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

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

In this case, Respondent received \$ ██████ in FAP benefits that she was not entitled to; therefore, the Department will be able to 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, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV for the FAP program.

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

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] for the FAP program in accordance with Department policy.

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



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

Date Signed: **5/15/2015**

Date Mailed: **5/15/2015**

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

