

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-006764
Issue No.: 1005; 2005; 3005
Agency Case No.: [REDACTED]
Hearing Date: October 27, 2015
County: Wayne-District 76

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 October 27, 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), Family Independence Program (FIP), 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 FAP benefits for 1 year?

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 May 6, 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 program benefits.
3. Respondent was a recipient of FAP, FIP, and MA benefits issued by the Department.
4. On the Assistance Application, DHS 1171, signed by Respondent on August 25, 2011, the Respondent reported that she/he intended to stay in Michigan. Department Exhibit 11-28.
5. Respondent was aware of the responsibility to report changes in her/his residence to the Department where the Respondent used FAP benefits exclusively in the State of Georgia and Alabama for over thirty (30) consecutive days. Department Exhibit 29-33.
6. Respondent began using FAP benefits outside of the State of Michigan beginning in November 2011.
7. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. A notice of hearing was mailed to Respondent at the last known address and was returned by the US Post Office as undeliverable. As a result, the FIP and MA portion of this hearing is dismissed without prejudice.
9. The Department's OIG indicates that the time period it is considering the fraud period for FAP is January 1, 2012 through July 31, 2012 (fraud period).
10. 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 \$0 in such benefits during this time period.
11. The Department alleges that Respondent received an OI of \$ [REDACTED] in FAP benefits.
12. This was Respondent's first alleged IPV.

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 of Health and Human Services (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 over issuances 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, ASM 165.

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; 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.

Disqualification

A client who is found to have committed a IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720; BEM 708. 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. 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. 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.

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, the Respondent was a recipient of FAP, FIP, and MA benefits issued by the Department. On the Assistance Application, DHS 1171, signed by Respondent on August 25, 2011, the Respondent reported that she/he intended to stay in Michigan. Department Exhibit 11-28. Respondent **was** aware of the responsibility to report

changes in her/his residence to the Department where the Respondent used FAP benefits exclusively in the State of Georgia and Alabama for over thirty (30) consecutive days. Department Exhibit 29-33. Respondent began using FAP benefits outside of the State of Michigan beginning in November 2011. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

A notice of hearing was mailed to Respondent at the last known address and **was** returned by the US Post Office as undeliverable. A notice of hearing was mailed to Respondent at the last known address and **was** returned by the US Post Office as undeliverable. Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualification Hearing that was mailed to Respondent at the last known address, and that constituted due notice, was returned to the Michigan Administrative Hearing System (MAHS) by the United States Postal Service as undeliverable. Department policy dictates that when the Notice of Hearing concerning an Intentional Program Violation (IPV) is returned as undeliverable, the hearing cannot proceed except with respect to the Food Assistance Program (FAP). Department of Health and Human Services Bridges Administrative Manual (BAM) 720. Because the hearing concerned FIP and MA benefits, that portion of the hearing cannot proceed. As a result, the FIP and MA portion of this hearing is dismissed without prejudice based on policy. As a result, the FIP and MA portion of this hearing is dismissed without prejudice.

The Department's OIG indicates that the time period it is considering the fraud period for FAP and MA is January 1, 2012 through July 31, 2012 and FIP for January 1, 2012 through March 31, 2012 (fraud period). 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 \$0 in such benefits during this time period. The Department alleges that Respondent received an OI of \$ [REDACTED] in FAP benefits. This was Respondent's first alleged IPV. The Respondent failed to report her/her change in residency from the State of Michigan to the Department, which resulted in his/her receiving an overissuance of \$ [REDACTED] in FAP benefits that the Department is required to recoup during the contested time period. Department Exhibit 1-46.

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. As a result of the hearing notice being returned, the FIP and MA portion of this hearing is dismissed without prejudice based on policy.

3. The Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] in FAP benefits.

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

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

Carmen G. Fahie

Carmen G. Fahie
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **11/2/2015**

CGF/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

[REDACTED]