

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 15-014037  
Issue No.: 1005, 2005, 3005  
Case No.: [REDACTED]  
Hearing Date: September 29, 2015  
County: Wayne-District 76

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 29, 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) benefits, Family Independence Program (FIP) benefits and 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) benefits and Family Independence Program (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 July 30, 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 program benefits.
3. Respondent was a recipient of FAP, FIP and MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent, Respondent reported that she intended to remain in Michigan.
5. Respondent was aware of the responsibility to report to the Department any changes in household circumstances within 10 days.
6. Respondent began using FAP and FIP benefits outside of the State of Michigan beginning in March, 2011.
7. Respondent received FAP and FIP benefits in Michigan and Tennessee concurrently.
8. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
9. The Department's OIG indicates that the time periods it is considering the fraud periods are as follows: (1) FIP is August 1, 2011 through March 31, 2012; (2) FAP is April 11, 2011 through July 31, 2012; and MA is April 11, 2011 through July 31, 2012.
10. During the alleged FIP fraud period, Respondent was issued \$ [REDACTED] in FIP 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 in FIP benefits in the amount of \$ [REDACTED]
12. During the alleged FAP 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.
13. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
14. During the alleged MA fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
15. For all three programs (FIP, FAP and MA) the Department alleges that Respondent received a total OI of \$ [REDACTED] in benefits.

16. This was Respondent's first alleged FIP and FAP IPV.
17. 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) [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-.3011.

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 Family Independence Agency) 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-.3131.

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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222 (7-1-2013), p 1.

A person **cannot** receive FAP in more than one state for any month. A recipient of cash assistance from another state is **not** eligible for FIP, RCA or SDA in Michigan for the **same** month. BEM 222 (7-1-2013), p 1.

## **Intentional Program Violation**

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG), p 36.

The Department's OIG requests IPV hearings for the following cases:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. 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 (10-1-2014), p. 12-13.

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 (5-1-2014), p. 6; 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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Here, the Department OIG alleges that Respondent committed an IPV when she failed to timely and properly report to the Department a change of address in order to receive an OI of benefits. The Department OIG further contends that Respondent received dual assistance from the State of Tennessee.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

In this case, the record shows that Respondent used her Michigan-issued Electronic Benefit Transfer (EBT) card in Tennessee for a period in excess of 30 (thirty) days, which demonstrates a change of residency. (Exhibit 1, pp 39-44, 45). Documentation from the State of Tennessee showed that Respondent was active for FIP, FAP and MA benefits during the fraud period. (Exhibit 1, pp 47-60) Respondent failed to properly and timely report this to the Department. Respondent was advised of her rights and responsibilities concerning program benefits. (Exhibit 1, p. 25) Respondent's electronic signature on the online assistance application in this record certifies that she was aware

of these rights and responsibilities. (Exhibit 1, p. 25) Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting responsibilities. The record shows that Respondent intentionally and fraudulently failed to report a change of address in order to receive an OI of FIP, FAP and MA benefits. Accordingly, this Administrative Law Judge finds clear and convincing evidence on the whole record that Respondent committed an IPV because intentionally failed to report information needed to make a correct benefits determination.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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. 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.

Here, the Department has shown that Respondent was guilty of her first IPV concerning FIP and FAP benefits, Respondent shall be personally disqualified from receiving FIP benefits for a period of 1 year. However, Respondent received FAP benefits concurrently from Michigan and Tennessee, which carries a 10 year disqualification.

### **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. In this matter, the Department has shown that Respondent received an OI of FIP, FAP and MA benefits. According to BAM 700, the Department may recoup this OI.

## **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. Respondent did commit an IPV concerning FIP, FAP and MA benefits by clear and convincing evidence.
2. Respondent did receive an OI of FIP, FAP and MA benefits in the amount of \$ [REDACTED]

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FIP for a period of 12 months and Respondent shall be disqualified from FAP for a period of 10 years.



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C. Adam Purnell  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **9/30/2015**

Date Mailed: **9/30/2015**

CAP/las

**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:

