

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201045918  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
October 21, 2010  
Genesee County DHS

**ADMINISTRATIVE LAW JUDGE:** Gary F. Heisler

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on November 4, 2009. The Respondent did not appear at the hearing and it was held in the Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

**ISSUE**

Whether the Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether the Respondent received an overissuance of benefits that the department is entitled to recoup?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. The Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by the respondent as a result of the respondent having committed an Intentional Program Violation (IPV); the OIG also requested that the respondent be disqualified from receiving program benefits.

2. The Respondent signed Assistance Application (DHS-1171) on June 15, 2006, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her.
3. The Respondent indicated on the June 15, 2006 application that she was unemployed and had no income.
4. On February 29, 2008, the Department received an Employee Wage History by SSN which showed that the Respondent had received earnings beginning the second quarter of 2006 through the second quarter of 2007 a [REDACTED].
5. On February 29, 2008, the Department received verification of employment from [REDACTED] indicating that the Respondent began employment with them on June 19, 2006 until the second quarter of 2007.
6. The Respondent received [REDACTED] in FAP benefits during the alleged fraud period of August 1, 2006 through February 28, 2007. If the income had been properly reported and budgeted by the department, the Respondent would only have been eligible to receive \$100 in FAP benefits.
7. The Respondent failed to report her employment income in a timely manner, resulting in a FAP overissuance for the months of August, 2006 through February, 2007, in the amount of [REDACTED].
8. The Respondent was clearly instructed and fully aware of her responsibility to report all household income to the department.
9. The Respondent was physically and mentally capable of performing her reporting responsibilities.
10. The Respondent has not committed any previous intentional FAP or FIP program violations.
11. A Notice of Disqualification Hearing was mailed to the Respondent at the last known address and was returned by the U.S. Post Office as undeliverable. The Respondent's last known address is: [REDACTED].

## CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case, the Department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the Department has asked that respondent be disqualified from receiving benefits. The Department's manuals provide the following relevant policy statements and instructions for department caseworkers:

### **BENEFIT OVERISSUANCES**

#### **DEPARTMENT POLICY**

##### **All Programs**

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM, Item 700, p. 1.

##### **Definitions**

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the “establishment date” has been renamed “notice sent date.”

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

**Overissuance Type** identifies the cause of an overissuance.

**Recoupment** is a DHS action to identify and recover a benefit OI. BAM 700, p. 1.

## **PREVENTION OF OVERISSUANCES**

### **All Programs**

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following BAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups

are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.

- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

## **INTENTIONAL PROGRAM VIOLATION**

### **DEFINITIONS**

#### **All Programs**

#### **Suspected IPV**

**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 their reporting responsibilities.

Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM, Item 720, p. 1.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

The federal Food Stamp regulations read in part:

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

## **IPV**

### **FIP, SDA AND FAP**

**IPV** exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. BAM, Item 720, p. 1.

### **FIP Only**

The Aid to Families with Dependent Children (ADC) program was succeeded by the Family Independence Program (FIP). Treat these programs as interchangeable when applying IPV disqualification policy.

**Example:** Clients who committed an IPV while receiving ADC are to be disqualified under the FIP program. BAM, Item 720, p. 2.

### **FAP Only**

**IPV** exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 720, p. 2.

### **MA and CDC Only**

IPV exists when the client/AR or CDC provider:

- . is found guilty of fraud by a court, **or**
- . signs a DHS-4630 **and** the prosecutor or Office of Inspector General (OIG) authorizes recoupment in lieu of prosecution. BAM, Item 720, p. 2.
- . is found responsible for the IPV by an administrative law judge conducting an IPV or Debt Establishment Hearing. BAM, Item 720, p. 2.

### **OVERISSUANCE AMOUNT**

#### **FIP, SDA, CDC and FAP Only**

The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 6.

#### **FAP Only**

When the OI involves two or more FAP groups which should have received benefits as one group, determine the OI amount by:

- . Adding together all benefits received by the groups that must be combined, **and**
- . Subtracting the correct benefits for the one combined group. BAM 720, pp. 6-7.

#### **FAP Trafficking**

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- . the court decision, **or**
- . the individual's admission, **or**
- . documentation used to establish the trafficking determination. BAM 720, p. 7.

### **IPV Hearings**

#### **FIP, SDA, CDC, MA and FAP Only**

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

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 combined 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.



Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. BEM, Item 720, p. 10.

## **DISQUALIFICATION**

### **FIP, SDA and FAP Only**

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, pp. 12-13.

### **Standard Disqualification Periods**

#### **FIP, SDA and FAP Only**

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

#### **FIP and FAP Only**

- . Ten years for concurrent receipt of benefits (see BEM 203). BAM 720, p. 13.

In this case, the Department has established that Respondent was aware of the responsibility to report all income and employment to the Department. The Department's policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM, item 105, p. 7. The Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. The Respondent completed an application for assistance on June 15, 2006. On this application, the Respondent indicated that she was unemployed and had no income. There is no evidence that the Respondent ever reported starting work. The Verification of Employment information shows that the Respondent did work at [REDACTED] beginning in June of 2006. However, the Respondent continued to have no earnings budgeted into her case. The notices generated to the Respondent would have shown that no earned income was being budgeted and should have alerted the Respondent that she had not reported her employment income.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that the Respondent committed a first intentional violation of the FAP program, resulting in a [REDACTED] overissuance from August, 2006 through February, 2006. Consequently, the Department's request for FAP disqualification and full restitution must be granted.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the clear and convincing evidence, decides the Respondent committed a first intentional FAP violation.

Therefore, it is ORDERED that:

1. The Respondent shall be personally disqualified from participation in the FAP program for one year, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this order.
2. The Respondent is responsible for full restitution of the [REDACTED] FAP overissuance caused by her Intentional Program Violation (IPV).

/s/\_\_\_\_\_

Gary F. Heisler  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: December 6, 2010

Date Mailed: December 7, 2010

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**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.

GFH/vc

cc:

