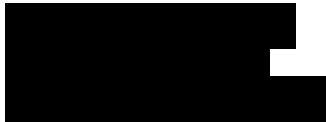


STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201039066

Issue No: 3055



ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on October 20, 2010. The Respondent, Scott John Peterson, appeared and provided testimony.

**ISSUE**

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether 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 Respondent as a result of Respondent having committed an Intentional Program Violation (IPV); the OIG also requested that Respondent be disqualified from receiving program benefits.
2. Respondent signed Assistance Application (DHS-1171) on December 18, 2008, acknowledging that he understood his failure to give timely, truthful, complete and accurate information about his circumstances could result in a civil or criminal action or an administrative claim against him. (Department Exhibit 23-38).

3. On April 30, 2009, the department provided Respondent with notice of his eligibility to receive FAP benefits in the amount of [REDACTED] monthly effective May 2009 based on his household size of 5 and net income of [REDACTED]. (Department Exhibit 41-42).
4. On September 17, 2009, a Verification of Employment was received by the department showing Respondent was employed at Associated Constructors from April 18, 2009 to September 12, 2009. (Department Exhibit 43-48).
5. Respondent reported his employment to the department both by telephone and by presenting the department with a copy of his paystub; however the department has no record of either action.
6. In light of Respondent's employment income, Respondent was not eligible to receive any FAP benefits during the period of June 2009 through September 2009, resulting in a FAP overissuance for the months of June 2009 through September 2009 in the amount of [REDACTED]0. (Department Exhibit 64-75).
7. Respondent was clearly instructed and fully aware of the responsibility to report all employment and income to the department.
9. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
10. Respondent had not committed any previous intentional program violations of the FAP program. (Department Exhibit 1).

### **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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

## **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 PEM 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

In this case, the department has established that Respondent was aware of the responsibility to report all income and employment to the department. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM, item 105, p. 7. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent completed an application for assistance on December 18, 2008. On this application, Respondent indicated that he was unemployed. The Verification of Employment information shows that Respondent was employed at Associated Constructors from April 18, 2009 to September 12, 2009. However, Respondent continued to have no earnings budgeted into his case. Respondent testified that he was fully aware of his responsibilities to report to the department any change in his circumstances and, in fact, did so within 10 days of obtaining employment – by contacting his caseworker by telephone and by visiting the local office and submitting a copy of his first pay stub to the department. While the department has no record of Respondent’s report, this Administrative Law Judge finds Respondent’s testimony to be credible in this regard.

This Administrative Law Judge therefore concludes that while the department has shown that Respondent received a [REDACTED] overissuance of FAP benefits from June 2009 through September 2009, the department has not established by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining, increasing or preventing a reduction of program benefits or eligibility. Consequently, the department’s request for full restitution must be granted, however the department’s request for FAP program disqualification must be denied.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent received an overissuance of FAP benefits from June 2009 through September 2009 in the amount of [REDACTED]. The Administrative Law Judge further decides however that the department did not establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining, increasing or preventing a reduction of program benefits or eligibility.

