

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

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No: 2010-50429  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 17, 2010  
Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Kandra Robbins

**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 recoupment of Food Assistance Program Benefits due to an intentional program violation. After due notice, a hearing was held on November 17, 2010. Respondent was present.

**ISSUE**

Whether respondent committed an Intentional Program Violation (IPV) on the Food Assistance program 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) Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of FAP benefits received by respondent as a result of respondent having committed an Intentional Program Violation (IPV)
- (2) Respondent signed a Food Assistance Application on June 17, 2003 acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him (Department Exhibit 2 page 16).

- (3) Respondent began employment with the "[REDACTED]" on September 2, 2003.
- (4). Respondent called his case worker on September 10, 2003 and left a message for her.
- (5) On September 17, 2003, Ms. Grosvener returned the message and informed [REDACTED] that he needed to provide the information regarding his employment in writing.
- (6) On September 19, 2003, Respondent left a written letter regarding his new employment at the front desk of the DHS office.
- (7) On March 1, 2004 Respondent completed a new application for Food Assistance Program listing his employment with the [REDACTED].
- (8) The Office of Inspector General indicates that the time period they are considering the fraud period is November 1, 2003 until April 30, 2004.
- (9) The Respondent received \$1, 548.00 in Food Assistance and was only entitled to receive 418.00 (Department Exhibit 9)
- (10) Respondent has not committed any previous intentional MA program violations.

### **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 (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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. PAM 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. PAM, 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 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 \$1,000 or more, **or**

. The total OI amount is less than \$1,000, **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. PEM, Item 720, p. 10.

### **All Programs**

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department.

A client error also exists when the client's timely request for a hearing results in the deletion of a Department of Human Services (DHS) action, and any of:

- . The hearing decision upholds the DHS action.
- . The client withdraws the hearing request.
- . The client fails to appear for the hearing which is not rescheduled.
- . The State Office of Administrative Hearings and Rules (SOAHR) sends written notice to proceed with case actions. BAM 710.

### **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. PAM 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 any changes in residency to the department. Respondent received FAP benefits in the amount of \$258.00 from November 2003 until April of 2004. Department policy indicates that clients must report all changes that could potentially affect eligibility or benefits amount within ten days of when the client is aware of the change. BAM, item 507, p. 7. This would include any change in income. In this case, Respondent's income changed as a result of his employment as a newspaper delivery person. It is found that the Respondent reported this income to the Department when he contacted his case worker. Respondent has testified clearly, consistently and credibly that he contacted his case worker and reported this income. The Department has not rebutted this claim of the Respondent. The worker did not testify. The Department representative was only able to indicate what was in the file. As a result it is found that the error in the Respondent's income was not the result of an intentional violation but an error in the Department paperwork. Department policy indicates that the overissuance amount is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. BAM, item 720, p. 6. The respondent was issued the following amounts during the period of November 2003 through April 2004: FAP: \$258 (November 2003); \$258 (December 2003); \$258 (January, 2004) ; \$258 (February 2004); \$258 (March 2004) and \$258 (April, 2004), for a total FAP of \$1548.00. He was only eligible to receive \$418.00 and therefore had an OI of \$1,130.

Although the overissuance is found to the result of Department error, policy requires that the respondent repay the amount of overissuance. (BAM 705.)

**DECISION AND ORDER**

The Administrative Law Judge, based upon the clear and convincing evidence, decides that there was an agency error that resulted in an overissuance to the respondent.

Therefore it is ORDERED that:

- (1) Respondent is responsible for full restitution of the \$1,130 FAP overissuance caused by Agency error in the Assistance Application.

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

Kandra Robbins  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: November 29, 2010

Date Mailed: November 30, 2010

**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.

KKR/tg

cc:

