

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

IN THE MATTER OF:



Reg. No: 201052720  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
October 27, 2010  
Calhoun 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).

**ISSUES**

1. Whether the Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether the Respondent received an overissuance of benefits from Michigan which the department is entitled to recoup?
2. Whether Respondent made fraudulent statements or representations about his residence in order to receive Food Assistance Program (FAP) benefits simultaneously from Michigan and [REDACTED]

**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 over-issuance of benefits received by the

respondent as a result of the Respondent having committed an Intentional Program Violation (IPV). The OIG also asserts that Respondent committed a receipt of duplicate benefits violation.

2. The Respondent signed an Assistance Application (DHS-1171) on June 30, 2009, 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. On the application Respondent indicated he was homeless and intended to stay in Michigan.
3. The Respondent received Food Assistance Program (FAP) benefits through the Michigan Department of Human Services from July of 2009 until January of 2010.
4. On August 17, 2009, the Respondent completed an assistance application for Food Assistance Program (FAP) benefits in [REDACTED]. On the application Respondent reported that he arrived in [REDACTED] on August 14, 2009, was staying in a shelter and had not received benefits in any other state. Respondent also signed an authorization for the [REDACTED] Department of Economic Security to release information he provided to them in his application.
5. The Respondent received Food Assistance Program (FAP) benefits through [REDACTED] from August 2009 until February 2010, while he was concurrently receiving Food Assistance Program (FAP) benefits through Michigan.
6. Once Respondent was no longer a resident of Michigan, he was no longer eligible to receive Food Assistance Program (FAP) benefits through Michigan. The Respondent intentionally failed to report his change of residence to [REDACTED] in order misrepresent himself as a resident of Michigan and continue to receive Food Assistance Program (FAP) benefits through Michigan.
7. Respondent made a fraudulent statement on the [REDACTED] application in order to conceal his status as a Michigan resident and receive Food Assistance Program (FAP) benefits through [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 a receipt of duplicate benefits violation. 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.

### **BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS**

#### **DEPARTMENT POLICY**

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

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance.

Policy for IPV disqualifications and overissuances is found in BAM 700 and 720.

### **Duplicate Receipt Of Assistance.**

#### **FIP**

A person is disqualified for a period of 10 years beginning with the date of conviction if convicted in court of having made a fraudulent statement or representation regarding his residence in order to receive assistance simultaneously from two or more states under any of the following programs:

- State programs funded under Title IV-A of the Social Security Act (known as Temporary Assistance for Needy Families (TANF) in the Social Security Act; known as FIP in Michigan);
- MA, FAP, or SSI.

#### **FAP**

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously.

The Respondent failed to appear at this hearing and it was held in his absence. The notice to the Respondent was not returned as undeliverable and the OIG Agent in this case did actually have contact with the Respondent regarding the proposed IPV. This Administrative Law Judge finds that though the Department knew of a more recent address for the Respondent in [REDACTED], the Respondent none-the-less received proper notice of this hearing.

In this case, the Department has established that Respondent was aware of the responsibility to report any change in circumstances that will affect eligibility or benefit amount within ten days. 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 30, 2009. There is no evidence that the Respondent ever reported a move out of state and the OIG Agent testified that she had contact with the Respondent, who asserted that he had lost his EBT card and the PIN number was taped to the card. This claim is found to be less than credible, as the Respondent's signatures on the assistance applications from both states are nearly identical.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that Respondent committed an intentional program violation of the FAP program, resulting in a [REDACTED] over-issuance from the period of August 1, 2009 until January 31, 2010. The evidence also shows that Respondent made fraudulent statements or representations about his residence in order to receive Food Assistance Program (FAP) benefits simultaneously from Michigan and [REDACTED].

**DECISION AND ORDER**

The Administrative Law Judge, based upon the clear and convincing evidence, decides the Respondent committed an intentional program violation of the Food Assistance Program (FAP), was over-issued [REDACTED] of Food Assistance Program (FAP) benefits through Michigan as a result of the intentional program violation, and made fraudulent representations about his residence in order to receive Food Assistance Program (FAP) benefits through Michigan and [REDACTED] concurrently.

Therefore, it is ORDERED that:

1. The Respondent shall be personally disqualified from participation in the Food Assistance Program (FAP) for ten years.
2. The Respondent is responsible for full restitution of the [REDACTED] Food Assistance Program (FAP) over-issuance through Michigan.

/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

**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: [REDACTED]