

**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: 201250029
Issue No: 3055
Case No: [REDACTED]
Hearing Date: July 5, 2012
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge for a Intentional Program Violation hearing 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' request. After due notice, a hearing was held on July 5, 2012. Respondent did not appear. The record did contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between December 1, 2010 and November 30, 2011 which 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. On October 5, 2010, Respondent submitted an application for Food Assistance Program (FAP) benefits. Respondent gave a [REDACTED] address of a friend and indicated he was a group of 1.
2. On November 15, 2010, [REDACTED] submitted an application for benefits including Food Assistance Program (FAP). [REDACTED] listed [REDACTED], the child of Respondent and [REDACTED], as a member of her benefit group. Ms. Coleman did not initially list Respondent as a member of her benefit group but Respondent was added during the interview with the Department case worker. [REDACTED] gave her physical address as being on [REDACTED].
3. On June 2, 2011, [REDACTED] submitted a Redetermination Form (DHS-1010) and Respondent was still listed as a member of her benefit group.

4. On September 29, 2011, Respondent submitted a Redetermination Form (DHS-1010) for his still open Food Assistance Program (FAP) case. Respondent used the [REDACTED] address again and again represented he was a group of 1.
5. On February 28, 2012, Respondent was sent an Intentional Program Violation packet at the [REDACTED].
6. On May 8, 2012, the Office of Inspector General submitted the agency request for hearing of this case.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACR 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (IPV) and the Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

PAM 700 explains OI discovery, OI types and standards of promptness. PAM 705 explains agency error and PAM 715 explains client error.

DEFINITIONS

All Programs

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.

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.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

FAP Only

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

MA and CDC Only

IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**
- Signs a DHS-4350 **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**
- Is found responsible for the IPV by an Administrative Law Judge conducting an IPV or debt establishment hearing.

OVER-ISSUANCE PROCESSING
Recoupment Specialist Referral
FIP, SDA, CDC and FAP Only

Bridges refers most client errors, CDC provider errors and suspected IPV to the RS. Use the DHS-4701, Over-issuance Referral, to refer manual OIs.

MA and AMP Only

Do not refer these OIs to the RS. See BAM 710 for suspected IPV processing.

SER and ESS Only

Refer these OIs to the RS only when IPV is suspected and a FIP, SDA or FAP OI also exists for the same period. Follow procedures in the SER manual for recoupment of SER. Follow procedures in [BEM 232](#) for Direct Support Services (DSS) OIs.

OVER-ISSUANCE PERIOD
OI Begin Date
FIP, SDA, CDC and FAP

The OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date the OI was referred to the RS, whichever is later.

To determine the first month of the OI period (for OIs 11/97 or later) Bridges allows time for:

- The client reporting period, per BAM 105.
- The full standard of promptness (SOP) for change processing, per BAM 220.
- The full negative action suspense period.

Note: For FAP simplified reporting, the household has until 10 days of the month following the change to report timely. See BAM 200.

**OI End Date
FIP, SDA, CDC and FAP**

The OI period ends the month (or pay period for CDC) before the benefit is corrected.

**OVER-ISSUANCE AMOUNT
FIP, SDA, CDC and FAP**

The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. (Use BAM 715 inserted below)

**BAM 715
OVERISSUANCE CALCULATION
FIP, SDA, CDC and FAP
Benefits Received FIP, SDA and CDC Only**

The amount of benefits received in an OI calculation includes:

- Regular warrants.
- Supplemental warrants.
- Duplicate warrants.
- Vendor payments.
- Administrative recoupment deduction.
- EBT cash issuances.
- EFT payment.
- Replacement warrants (use for the month of the original warrant).

Do **not** include:

- Warrants that have not been cashed.
- Escheated EBT cash benefits (SDA only).

Warrant history is obtained from Bridges under Benefit Issuance; see RFT 293 and 294.

FAP Only

The amount of EBT benefits received in the OI calculation is the **gross** (before AR deductions) amount **issued** for the benefit month. FAP participation is obtained in Bridges under Benefit Issuance.

Determining Budgetable Income FIP, SDA, CDC and FAP

If improper reporting or budgeting of income caused the OI, use actual income for the OI month for that income source. Bridges converts all income to a monthly amount.

Exception: For FAP only, do not convert the averaged monthly income reported on a wage match.

Any income properly budgeted in the issuance budget remains the same in that month's corrected budget.

FAP Only

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. Use the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity.

For client error OIs due, at least in part, to failure to report earnings, do **not** allow the 20 percent earned income deduction on the unreported earnings.

Back to BAM 720 OIG RESPONSIBILITIES All Programs

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearing System (MAHS).
- Return non-IPV cases to the RS.

**IPV Hearings
FIP, SDA, CDC, MA and FAP**

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings 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.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

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 [REDACTED] or more, **or**
 - The total OI amount is less than [REDACTED]0, **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.

Regarding an intentional program violation by Respondent, the record contains applications from Ms. Coleman and Respondent which are contradictory. The record also contains a Secretary of State record showing Respondent's address as Marquette Street, the same as Ms. Coleman's application and Redetermination Form (DHS-1010). The record is sufficient to establish that Respondent gave inaccurate information to the Department which would prevent an accurate eligibility determination. It is clear that Respondent's actions were intended to receive Food Assistance Program (FAP) benefits he may not have otherwise been eligible for. However, any over-issuance was caused by the Department when they failed to close Respondent's FAP case and add him to Ms. Coleman's case.

The Department calculated the alleged over-issuance period as starting on December 1, 2010. Evidence in the record shows that Respondent received \$200 per month of Food Assistance Program (FAP) benefits every month between December 1, 2010 and November 30, 2011. When asked, the Department representative stated that

Respondent was not eligible for benefits under his own case because he was a mandatory group member of [REDACTED] benefit group. Department policy does require that Respondent be a member of [REDACTED] FAP benefit group. However, this record does not establish that Respondent was not eligible for ANY Food Assistance Program (FAP) benefits during the alleged over-issuance period. Showing whether or not there was an over-issuance of Food Assistance Program (FAP) benefits requires presentation of eligibility determinations for [REDACTED] benefit group with Respondent included. This record contains no evidence regarding Food Assistance Program (FAP) eligibility or benefits for Ms. Coleman.

In the vast majority of IPV cases the over-issuance is the result of the IPV. However, the IPV is no more than specific actions, or lack of actions, with the knowledge that benefits will be received which the subject is not otherwise eligible for. This case is unique in that an IPV is established but the alleged over-issuance was not actually caused by the IPV. This case also has a flaw in the alleged over-issuance such that the evidence presented is insufficient to establish whether or not an over-issuance occurred. Department policy cited above states "The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive." In this case benefits received by Respondent's group of 1 minus the amount [REDACTED] group of 3 (Respondent included) would have received.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) by providing false information which would prevent the Department from making an accurate eligibility determination. which resulted in a \$ [REDACTED] over-issuance of [REDACTED] benefits that the Department is entitled to recoup.

It is ORDERED that the actions of the Department of Human Services, regarding Respondent's disqualification, are UPHeld.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has not established that Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between December 1, 2010 and November 30, 2011.

201250029/GFH

It is ORDERED that the alleged Food Assistance Program (FAP) over-issuance in this matter is dismissed without prejudice.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 10, 2012

Date Mailed: July 11, 2012

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/TB

cc:

