

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

IN THE MATTER OF:



Reg. No.: 201254274
Issue No.: 2018, 3055
Case No.: [REDACTED]
Hearing Date: September 5, 2012
County: St. Clair

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge for an 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 September 5, 2012. Respondent did not appear. The record did not 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 October 1, 2009 and July 31, 2010 which the Department is entitled to recoup?

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received an \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between January 1, 2011 and April 30, 2011 which the Department is entitled to recoup?

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a \$ [REDACTED] over-issuance of Medical Assistance (MA) benefits between October 1, 2009 and May 31, 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 April 17, 2008, Respondent signed and submitted an application for Food Assistance Program (FAP) benefits. Respondent began receiving FAP benefits.

2. On August 17, 2009, Respondent's Electronic Benefit Transfer (EBT) card was used in Nevada. All transactions on the card were outside Michigan until August 7, 2010.
3. On March 4, 2010, Respondent participated in a telephone interview to renew his Food Assistance Program (FAP) benefits. Respondent stated he was staying out of state but not gone more than 30 days. Respondent's Food Assistance Program (FAP) benefits were continued.
4. On July 28, 2010, an application for Medical Assistance (MA) was filled out on behalf of Respondent while he was in [REDACTED] [REDACTED] [REDACTED]. The patient representative recorded that Respondent had come from Nevada on July 22, 2010.
5. On August 7, 2010, transactions on Respondent's Electronic Benefit Transfer (EBT) card began in Michigan again.
6. On November 17, 2010, transactions on Respondent's Electronic Benefit Transfer (EBT) card began out of state use. All transactions on the card were outside Michigan until May 1, 2011.
7. On May 24, 2012, the Office of Inspector General submitted a request for hearing on 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 AACRS R 400.3001-3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

In this case, the Department has requested a Food Assistance Program (FAP) disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (IPV) as well as a Medical Assistance (MA) over-issuance. 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)

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.

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] **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.

**BAM 710 RECOUPMENT OF MA OVERISSUANCES
DEPARTMENTAL POLICY
MA Only**

Initiate recoupment of an over-issuance (OI) due to **client error or intentional program violation (IPV)**, **not** when due to **agency error** (see BAM 700 for definitions). Proceed as follows:

- Determine the OI period and amount.
- Determine the OI Type (client error or suspected IPV).
- Initiate recoupment of an OI due to client error.

If IPV is suspected, refer the case to the Office of Inspector General (OIG), if appropriate, by completing a DHS-834, Fraud Investigation Request.

Note: OIs due to IPV are recouped by OIG working directly with the local office fiscal unit.

PROCEDURES

Document your decisions and actions on the application form. Your manager must review the case record.

MA Payment Information

Complete and mail or fax the DCH-203 (MSA-203), Medical Expenditures Request, to obtain a list of MA payments in the OI period to:

Department of Community Health
Program Investigation Section
400 S. Pine Street
6th floor
Lansing, MI. 48909-7979
Fax: 517-241-9087

For changes unreported by ongoing recipients, the OI period begins the first day of the month **after** the month in which the standard reporting period **plus** the negative action period would have ended.

Overissuance Determination

When you receive the amount of MA payments, determine the OI amount. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) **or** the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts **or** the amount of MA payments, whichever is less.

For an OI due to **any other** reason, the OI amount is the amount of MA payments.

OIG Referral

The **minimum** OI amount for OIG referral is **\$500 unless** the local prosecutor sets a lower amount. OIG through regular channels informs affected local offices of lower amounts.

You may refer an IPV that is **under** the set minimum **if** the group's actions are repetitious or flagrant. The local office director or designee must approve the referral.

The first issue addressed is the alleged Food Assistance Program (FAP) IPV and over-issuance between October 1, 2009 and July 31, 2010. Respondent certainly failed to report his change of residence to ██████ in August 2009 and committed outright fraud during his March 4, 2010 re-determination telephone interview when he told the Michigan DHS case worker he was not out of the state for more than 30 days. The record supports that Respondent committed an Intentional Program Violation (IPV) and received a Food Assistance Program (FAP) over-issuance of \$ ██████ between October 1, 2009 and July 31, 2010. Therefore this Food Assistance Program (FAP) Intentional Program Violation (IPV) is upheld.

The second issue addressed is the alleged Food Assistance Program (FAP) Intentional Program Violation (IPV) and over-issuance January 1, 2011 and April 30, 2011. This second issue is a separate Intentional Program Violation (IPV) from the one associated with the October 1, 2009 till July 31, 2010 over-issuance period. As already noted, Department policy identifies the over-issuance end date as the month before the benefit is corrected. Department policy does not provide any specific criteria to identify or define "benefit correction". In this case, Respondent returned to Michigan in August 2010 and remained for slightly over 3 months. Once Respondent was back in Michigan for more than 30 days, he became eligible to receive FAP benefits through Michigan again. At that time any over-issuance due to being out of state for more than 30 days ended. The termination of an over-issuance is a correction of the benefit.

Respondent's failure to report leaving the state for more than 30 days beginning January 1, 2011 is a separate action and a separate Intentional Program Violation (IPV). The two separate Intentional Program Violations (IPV), over-issuance periods, and over-issuance amounts are not a single Intentional Program Violation (IPV). Department policy provides for separate and larger disqualifications for a first, second, and third Intentional Program Violation (IPV). Different consequences for separate Intentional Program Violations (IPV) contained in Department policy shows the intention to differentiate between separate actions causing separate over-issuance periods and amounts.

The notice for this hearing was issued identifying it as a first Food Assistance Program (FAP) Intentional Program Violation (IPV). The consequence of a first Intentional Program Violation (IPV) is a one year disqualification. The notice does not state the hearing is also for a second Food Assistance Program (FAP) Intentional Program Violation (IPV). The consequence of a second Food Assistance Program (FAP) Intentional Program Violation (IPV) is a two year disqualification. Respondent's due process rights would be violated if this hearing resulted in a determination that Respondent had committed two separate Food Assistance Program (FAP) Intentional Program Violations (IPV) and would be disqualified for three years total. For that reason the second issue in this hearing is dismissed without prejudice.

The third issue to be addressed is the Medical Assistance (MA) Intentional Program Violation (IPV) and over-issuance. While the Department has identified a single over-issuance period for Medical Assistance (MA) there are actually two separate periods. The Department has submitted evidence of Medical Assistance (MA) payments for Respondent between October 1, 2009 and December 31, 2009. Medical Assistance (MA) expenses from July 26 to 29, 2010 are also submitted as part of the alleged Medical Assistance (MA) over-issuance amount. Bridges Administration Manual 720 Intentional Program Violation and Bridges Administration Manual 710 Recoupment of MA Over-Issuances do not provide for any disqualification penalty for a Medical Assistance (MA) Intentional Program Violation (IPV). The majority of impact from a Medical Assistance (MA) Intentional Program Violation (IPV) is the accounting category the over-issuance is assigned to. In the absence of separate disqualification penalties, there are no due process road blocks to prevent addressing separate alleged Medical Assistance (MA) Intentional Program Violations (IPV). However, Bridges Administration Manual 720 still contains dollar value limits for each individual Intentional Program Violation (IPV) alleged by the Department.

Evidence regarding the alleged Medical Assistance (MA) Intentional Program Violation (IPV) and over-issuance between October 1, 2009 and December 31, 2009 certainly shows that Claimant intentionally failed to report his change of residence to Nevada by October 1, 2009. In accordance with Bridges Administration Manual 710, the Department has submitted evidence showing the over-issuance amount for the over-issuance period. The record supports that Respondent committed an Intentional Program Violation (IPV) and received a Medical Assistance (MA) over-issuance of \$4,848.96 between October 1, 2009 and December 31, 2009. Therefore this Medical Assistance (MA) Intentional Program Violation (IPV) is upheld.

The other Medical Assistance (MA) Intentional Program Violation (IPV) asserted by the Department is for an over-issuance period of July 26, 2010 to July 29, 2010. This coincides with Respondent's hospitalization in Michigan and the July 27, 2010 Medical Assistance (MA) application submitted by a patient representative of the hospital. The application contained information that Claimant had come to Michigan from Nevada on July 22, 2010. The application was subsequently approved and \$ [REDACTED] of Respondent's bill was paid. There is no evidence in the record that supports a conclusion that any Intentional Program Violation (IPV) was committed in connection with Respondent's July 27, 2010 Medical Assistance (MA) application and the subsequent approval of benefits. Therefore, alleged Medical Assistance (MA) Intentional Program Violation (IPV) and \$ [REDACTED] over-issuance between July 26, 2010 and July 29, 2010 is not upheld.

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 a Food Assistance Program (FAP) Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between October 1, 2009 and July 31, 2010 which the Department is entitled to recoup.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that the alleged Food Assistance Program (FAP) Intentional Program Violation (IPV) and over-issuance period January 1, 2011 to April 30, 2011 is a separate Intentional Program Violation (IPV) which cannot be combined with the October 1, 2009 to July 31, 2010 over-issuance period. The alleged Intentional Program Violation (IPV) and over-issuance of Food Assistance Program (FAP) benefits between January 1, 2011 and April 30, 2011 is dismissed without prejudice.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that that the Department has established by clear and convincing evidence that Respondent committed a Medical Assistance (MA) Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Medical Assistance (MA) benefits between October 1, 2009 and December 31, 2009 which the Department is entitled to recoup.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that that the Department HAS NOT established by clear and convincing evidence that Respondent committed a Medical Assistance (MA) Intentional Program Violation (IPV) with an over-issuance period of July 26, 2010 to July 29, 2010. This alleged Medical Assistance (MA) Intentional Program Violation (IPV) is not upheld.

/s/

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

Date Signed: September 27, 2012

Date Mailed: October 1, 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:

[REDACTED]