

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**



Reg. No.: 2012-38462  
Issue No.: 3055  
Case No.:   
Hearing Date: May 9, 2012  
County: Oakland (63-04)

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**HEARING DECISION FOR CONCURRENT BENEFITS**  
**INTENTIONAL PROGRAM VIOLATION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on May 9, 2012, from Detroit, Michigan. The Department was represented by

Participants on behalf of Respondent included: .

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

**ISSUES**

1. Did Respondent receive an overissuance (OI) of

- Family Independence Program (FIP)     Food Assistance Program (FAP)  
 Medical Assistance Program (MA)

benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving

- Family Independence Program (FIP)     Food Assistance Program (FAP)

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on March 26, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG  has  has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of  FAP  FIP  MA benefits during the period of October 1, 2010-October 31, 2011.
4. On the Assistance Application signed by Respondent on November 30, 2010, Respondent reported she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using  FAP  FIP  MA benefits outside of the State of Michigan on January 16, 2011.
8. The OIG indicates that the time period they are considering the fraud period is January 1, 2011-October 31, 2011.
9. During the alleged fraud period, Respondent was issued \$3,829 in  FAP  FIP  MA benefits from the State of Michigan.
10. The Department  has  has not established that Respondent received concurrent benefits and thus committed an IPV.
11. This was Respondent's  first  second  third IPV.
12. A notice of hearing was mailed to Respondent at the last known address and  was  was not returned by the US Post Office as undeliverable.

## CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 1999 AC, Rule 400.3001 through Rule 400.3015.

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.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700.

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 has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
  - the group has a previous intentional program violation, or
  - the alleged IPV involves FAP trafficking, or
  - the alleged fraud involves concurrent receipt of assistance,
  - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720.

Additionally, it is found and determined that the Department presented insufficient evidence to sustain its burden of proving by clear and convincing evidence that an IPV or OI occurred in this case.

The Department's first assertion is that Respondent received food assistance benefits from the State of [REDACTED] at the same time she received FAP benefits from the State of Michigan. In support of this assertion, the Department submitted an unsigned, untitled, unverified document listing receipt of various monies. The document also fails to state the type of benefits received, i.e., whether the [REDACTED] benefits were food assistance or another type of benefit.

It is found and determined that this document is insufficient evidence because there is no reliable identifying and authenticating information presented on which the factfinder may rely. Because the document is incomplete and not authenticated, its contents are not credible and are not reliable evidence.

The Department's second assertion is that Respondent failed to report a change of address on or about January 1, 2011, the date when she may, in fact, have moved to

██████. The Department presented FAP purchase records to establish Respondent's change of residence. The FAP purchase records indicate that after January 15, 2011, Respondent made FAP purchases solely in ██████ and no other state.

However, this evidence is somewhat contradicted by the Department's next piece of evidence, which is the LexisNexis Public Records: Comprehensive Person Report. This report gives as many as four possible addresses for Respondent in January 2011. Three of them are in Michigan and one is in ██████. This report casts some doubt as to the reliability of the Department's assertion that Respondent failed to report a change of address.

However, the more significant impediment in this case is that for the ten alleged fraud months, the Department failed to present monthly budgets detailing the FAP benefits received, the actual amount for which she was eligible, and the amount of overissuance. With regard to this issue, the Department presented only a summary, stating Respondent was eligible for \$499 and she was overissued \$3,330. Because the supporting evidence was not provided to the undersigned, it is impossible to determine if the Department's numerical calculations of OI are correct.

Thus, even if it were to be found that Respondent failed to report a change of address on or about January 1, 2011, the Department in this case did not submit records to substantiate its calculation of the amount owing.

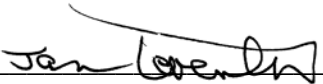
In conclusion, for all of the above reasons, the Department's request for an IPV and OI determination is DENIED.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. Respondent  did  did not commit an IPV.
  2. Respondent  did  did not receive an OI of program benefits in the amount of \$3,330 from the following program(s)  FAP  FIP  MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$ \_\_\_\_\_ in accordance with Department policy.
- The Department is ORDERED to reduce the OI to \$ \_\_\_\_\_ for the period \_\_\_\_\_, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years. This disqualification period shall begin immediately as of the date of this Order.

  
\_\_\_\_\_  
**Jan Leventer**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: May 15, 2012

Date Mailed: May 15, 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.

JL/pf

cc:

