

**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: 201250449
Issue No: 3055
Case No: [REDACTED]
Hearing Date: August 23, 2012
Ottawa County DHS

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 August 23, 2012. Respondent did not appear. The record did not contain returned mail. Respondent now resides in [REDACTED] and spoke to the OIG agent by telephone prior to this hearing. 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 August 1, 2006 and June 30, 2007 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 4, 2005, Respondent submitted an application for Food Assistance Program (FAP) benefits. Respondent indicated that he had quit employment at [REDACTED] on September 30, 2005 but would receive on last weekly paycheck of [REDACTED] during October. Respondent reported he had no current or ongoing earned income.
2. On October 19, 2005, Respondent was sent an Eligibility Notice (DHS-4400). The Food Assistance Program (FAP) financial eligibility budget on the notice showed his benefit group had earnings of [REDACTED] a month. The notice also stated Respondent must report if the household income exceeded [REDACTED] at the end of the month.

3. On December 14, 2005, Respondent began receiving earned income through [REDACTED].
4. On March 5, 2006, Respondent received his last pay check through [REDACTED].
5. On March 6, 2006, Respondent began employment at [REDACTED]. Respondent reported that he began receiving earned income.
6. On July 21, 2006, Respondent received a quarterly bonus check from [REDACTED] for [REDACTED].
7. On August 28, 2006, Respondent filled out and submitted an application to re-determine the Food Assistance Program (FAP) eligibility of his benefit group. On the application Respondent filled out that he received [REDACTED] per month of self-employment income from [REDACTED]. Respondent also filled out that he received earned income from [REDACTED] for [REDACTED] hours of work per week at [REDACTED] per hour.
8. On September 14, 2006, the Department case worker spoke with Respondent by telephone. The case worker recorded that Respondent worked an average of 35-40 hours per week at [REDACTED] 8 per hour. Respondent was sent an Eligibility Notice (DHS-4400). The Food Assistance Program (FAP) financial eligibility budget on the notice showed his benefit group had earnings of [REDACTED] ([REDACTED]), The notice stated that Respondent Food Assistance Program (FAP) benefits were based on a group size of 4 and net income of [REDACTED]. The notice also stated Respondent must report if the household's gross income exceeded [REDACTED] at the end of the month.
9. On October 20, 2006, Respondent received a quarterly bonus check from Gentex for [REDACTED].
10. On December 15, 2006, Respondent received a quarterly bonus check from [REDACTED] for [REDACTED].
11. On March 27, 2007, Respondent submitted a Semi-Annual Contact Report (DHS-1046). The Semi-Annual Contact Report (DHS-1046) listed an additional member in the household. A Verification of Employment (DHS Form 38) for [REDACTED] was also submitted which had been filled out by Respondent.
12. On April 2, 2007, Respondent submitted a DHS-1171 application. The application listed the additional group member also on the Semi-Annual Contact Report (DHS-1046). Respondent indicated the additional group

member bought and prepared food with the group. The case worker wrote on the notes page that Respondent's "case just closed."

13. On April 11, 2007, Respondent was sent an Eligibility Notice (DHS-4400). The Food Assistance Program (FAP) financial eligibility budget on the notice showed his benefit group had earnings of [REDACTED]. The notice stated that Respondent Food Assistance Program (FAP) benefits were based on a group size of 5 and net income of [REDACTED]. The notice also stated Respondent must report if the household's gross income exceeded [REDACTED] at the end of the month.
14. On April 27, 2007, Respondent received a quarterly bonus check from [REDACTED] for [REDACTED].
15. On April 17, 2012, Respondent was sent an Intentional Program Violation packet.
16. On May 9, 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)

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.

In this case the Department alleges that Respondent committed an intentional program violation by failing to report bonuses he was paid in July, October, and December 2006. The over-issuance period alleged is from August 1 2006 through June 30, 2007. The Food Assistance Program (FAP) over-issuance budgets submitted have applied: 1/3 of the July 2006 bonus to each of August, September, an October 2006; 1/3 of the October 2006 bonus to each of November 2006, December 2006 and January 2007; 1/3 of the December 2006 bonus to each of February, March, and April, 2007; and 1/3 of the April 2007 bonus to May and June 2007.

**BEM 501 INCOME FROM EMPLOYMENT
DEPARTMENT POLICY
All Types of Assistance (TOA)**

This item identifies both of the following:

- Which income types are considered earned.
- Which earned income types are excluded or counted for each TOA.

WAGES All TOA

Wages are the pay an employee receives from another individual or organization. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance.

Enter an employee's regular wages paid during a vacation or illness as earned income.

Enter a wage advance as earnings when the employer actually pays it. Do **not** count the money withheld to offset the advance.

Enter wages held by the employer at the request of the employee. Bridges will count as earnings. However, wages held as a general practice by the employer are **not** income until actually paid, and should not be entered in Bridges until anticipated or received.

Exception: Income received in one month that is intended to cover several months (for example contractual income) is considered available in each of the months covered by the income; see BEM 505. Bridges counts gross wages except as explained in this item or BEM 503 for:

- Earned Income Tax Credit (EITC).
- Flexible Benefits.
- STRIKERS' COUNTABLE EARNINGS.
- STUDENT EARNINGS DISREGARD.
- Census Workers.

Bridges Eligibility Manual (BEM) 501 Income from Employment, cited above, includes bonuses in the earned income category of wages. BEM 501 also states that income received in one month that is intended to cover several months (for example contractual income) is considered available in each of the months covered by the income.

Respondent received regular pay checks from his employment at [REDACTED] based on the number of hours he worked each week. The four quarterly bonus checks Respondent received from [REDACTED] were all for different amounts. The [REDACTED] report in evidence (Pages 80-89) identify the quarterly bonuses as "other pay" with no relationship to the number of hours Respondent worked.

The scheme used by the Department to allot the quarterly payments has no logical basis. For reasons not explained, or justified, the Department has elected to apply the July quarterly payment to the three months after payment two of which were in the same quarter as the payment and one month during the next quarter. The October 2006 quarterly bonus was also applied across two separate quarters, to the three months following payment. The December 2006 quarterly payment was actually received during

the middle month which the October 2006 quarterly payment was applied to but applied to February, March, and April 2007, to months after the payment was made in December 2006. Two thirds of the April 2007 quarterly bonus was applied to the two months following payment (May and June).

All business practices in the US recognize four quarters. January, February, and March are one quarter. April, May, and June are another quarter. July, August, and September are a quarter. The other quarter is October, November, and December. There is no evidence in the record which shows whether the July 2006 quarterly bonus was paid for Respondent having worked during the previous quarter (April, May, June) or for the quarter it was paid in (July, August, September). It seems completely unlikely that [REDACTED] would adopt a business practice of paying employees a bonus for months which they had not even worked yet.

Even if there was a logical scheme to dividing the quarterly bonuses between three months, Bridges Administration Manual (BAM) 720 Intentional Program Violation, cited above, states that if improper reporting or budgeting of income caused the OI, use actual income for the OI month for that income source. Because the budgeting is specifically for an IPV any direction given in BAM 720 supersedes the general directions from BEM 501. The Department could include the actual (whole) bonus check in an over-issuance budget for the single month the bonus was received. The Department cannot apply a bonus received in a single month to three different months, even if there was evidence linking the quarterly bonus to a specific quarter.

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, finds that the Department has not established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

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

Date Signed: September 11, 2012

Date Mailed: September 11, 2012

201250449/GFH

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:

