

**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: 201253258
Issue No: 3055
Case No: [REDACTED]
Hearing Date: July 17, 2012
Genesee 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 July 17, 2012. Respondent appeared and testified.

ISSUE

Whether Respondent committed a Food Assistance Program (FAP) Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between January 1, 2010 and April 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. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits. Respondent's benefit group included himself and his [REDACTED].
2. On October 30, 2009, [REDACTED] began working at [REDACTED]. This earned income was not budgeted in the group's financial eligibility budget.
3. On May 26, 2010, Respondent submitted a Redetermination Form (DHS-1010). There was no earned income listed on the form for [REDACTED].
4. On June 30, 2010, the earned income from [REDACTED] became known to the Department.
5. On November 4, 2010, [REDACTED] began working at [REDACTED]. This earned income was not budgeted in the group's financial eligibility budget.
6. On December 1, 2010, [REDACTED] stopped working at [REDACTED].

7. On April 12, 2011, [REDACTED] submitted an application for his own Food Assistance Program (FAP) case. He listed his employment at [REDACTED] on the application.
8. On May 22, 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 AACRS R 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], **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 asserts a Food Assistance Program (FAP) intentional program violation and has combined two separate OI periods and two separate intentional program violations into this one case. The first OI period is between January 1, 2010 and June 30, 2010 and the Department alleges that the over-issuance occurred because Respondent did not report [REDACTED] earned income from [REDACTED]. The second OI period is between January 1, 2011 and April 30, 2011 and the Department alleges that the over-issuance occurred because Respondent did not report [REDACTED] earned income from [REDACTED]. The Department policy cited above identifies the OI end date as the month before the benefit is corrected. In this case the Department became aware of the earned income from [REDACTED] on June 30, 2010 and that is why the first OI period ended.

Because specific and separate actions caused the two separate OI periods and amounts, they are not a single intentional program violation. Department policy provides for separate and larger disqualifications for a first, second, and third intentional program violation. Different consequences for separate intentional program violations, shows the intention to differentiate between separate actions causing OI's. Department policy does allow combination of OI amounts for different programs when all the OIs were caused by the same specific action. That is not the same as combining OI amounts from the same program, from separate OI periods caused by separate actions.

The OI amount alleged in the first alleged intentional program violation during the OI period between January 1, 2010 and June 30, 2010 is [REDACTED]. The Department policy cited above places an OI minimum on cases for the OIG to request an administrative hearing. That minimum is an OI amount of [REDACTED] for all programs combined. The evidence presented on the first intentional program violation does not meet the minimum OI amount identified in Department policy. Therefore the January 1, 2010 to June 30, 2010 claim is dismissed without prejudice.

The OI amount alleged in the second separate alleged intentional program violation during the OI period of January 1, 2011 to April 30, 2011 is [REDACTED]. This alleged OI amount does not meet the [REDACTED] minimum. However, the evidence submitted regarding the over-issuance was insufficient to determine if the alleged OI amount is correct. The extent of the evidence is a BRIDGES eligibility summary print out. There are no financial eligibility budgets for the months of the OI period.

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 a Food Assistance Program (FAP) Intentional Program Violation (IPV) which resulted in a

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██████ over-issuance of Food Assistance Program (FAP) benefits between January 1, 2011 and April 30, 2011 that the Department is entitled to recoup.

The January 1, 2011 and April 30, 2011 claim is dismissed without prejudice.

/s/

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

Date Signed: July 24, 2012

Date Mailed: July 24, 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:

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