

**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.: 201267769
Issue No.: 3055
Case No.: [REDACTED] 8
Hearing Date: September 25, 2012
County: Calhoun

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 25, 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 a Food Assistance Program (FAP) Intentional Program Violation (IPV) and whether Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between October 1, 2009 and May 31, 2010 which the Department is entitled to recoup?

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 September 1, 2010 and May 31, 2011 which the Department is entitled to recoup?

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 October 1, 2011 and May 31, 2012 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 June 2, 2009, Respondent was clearly and correctly instructed regarding reporting responsibilities as evidenced by his signature and submission of an application for Food Assistance Program (FAP) benefits.

Respondent was found eligible and began receiving Food Assistance Program (FAP) benefits.

2. On September 2, 2009, Respondent began using his Food Assistance Program (FAP) benefits issued through Michigan, in [REDACTED]. All Electronic Benefit Transfer (EBT) card transactions for Respondent's Food Assistance Program (FAP) benefits occurred exclusively in [REDACTED] until May 21, 2010.
3. Respondent intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination by not reporting his change of residence to [REDACTED].
4. Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.
5. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report his change of residence to Georgia and continuing to receive and use Food Assistance Program (FAP) benefits through Michigan when he was no longer a resident of Michigan and no longer eligible for benefits through Michigan.
6. October 1, 2009 to May 31, 2010 has correctly been determined as the over-issuance period in this case.
7. As a result of the Intentional Program Violation (IPV) Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits during the over-issuance period.
8. On August 6, 2012, the Office of Inspector General submitted the agency request for hearing of this case.
9. The alleged over-issuances between September 1, 2010 through May 31, 2011 and October 1, 2011 through May 31, 2012 are related to separate and subsequent alleged Intentional Program Violations (IPV). These two alleged Intentional Program Violations (IPV) cannot be determined in this hearing and are dismissed without prejudice.

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.

The Department policy cited above identifies the OI end date as the month before the benefit is corrected. Department policy does not provide any specific criteria to identify or define "benefit correction". However, it is certain that the benefit is corrected when the recipient is no longer receiving an over-issuance. Because specific and separate actions caused the two separate OI periods and amounts, they 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), 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 separate OI periods caused by separate actions.

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 and third Food Assistance Program (FAP) Intentional

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Program Violation (IPV). The consequence of a second Food Assistance Program (FAP) intentional program violation is a two year disqualification and for a third it is a lifetime disqualification. Respondent's due process rights would be violated if this hearing resulted in a determination that Respondent had committed not one but three, Food Assistance Program (FAP) Intentional Program Violations (IPV), and would be disqualified for life instead of only one year.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record.

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 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 May 31, 2010 which the Department is entitled to recoup.

It is ORDERED that the actions of the Department of Human Services regarding the October 1, 2009 to May 31, 2010 Intentional Program Violation (IPV) are UPHeld.

/s/

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

Date Signed: October 10, 2012

Date Mailed: October 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:

[REDACTED]