

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

IN THE MATTER OF:

JERMANE ANDERSON
463 HOWARD MCNEIL ST
PONTIAC, MI 48341

Reg. No.: 2012 78445
Issue No.: 3052, 2052
Case No.: 103422143
Hearing Date: February 19, 2013
County: Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on February 19, 2013, from Detroit, Michigan. The Department was represented by Joshua Jackson, Regulation Agent of the Office of Inspector General (OIG).

☐ 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

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| ☐ Family Independence Program (FIP) | ☒ Food Assistance Program (FAP) |
| ☐ State Disability Assistance (SDA) | ☐ Child Development and Care (CDC) |
| ☐ Medical Assistance (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) |
| ☐ State Disability Assistance (SDA) | ☐ Child Development and Care (CDC)? |
| ☒ Medical Assistance (MA) | |

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 August 5, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The Notice of Disqualification Hearing was returned as undeliverable on January 25, 2013.
3. The OIG ☒ has ☐ has not requested that Respondent be disqualified from receiving program benefits.
4. Respondent was a recipient of ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☒ MA benefits during the period of October 1, 2011, through May 31, 2012.
5. Respondent ☒ was ☐ was not aware of the responsibility to report a change of address.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period they are considering the fraud period is October 1, 2011 through May 31, 2012.
8. During the alleged fraud period, Respondent was issued \$960 in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued \$2764 in ☐ FIP ☐ FAP ☐ SDA ☐ CDC ☒ MA benefits from the State of Michigan.
10. Respondent was entitled to \$0 in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA during this time period.
11. Respondent ☒ did ☐ did not receive an OI in the amount of \$960 under the ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA program.
12. The Department ☐ has ☒ has not established that Respondent committed an IPV.

13. This was Respondent's ☒ first ☐ second ☐ third IPV.

14. 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 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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance (OI). Department of Human Services Bridges Administrative Manual (BAM) 700 (2013).

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. Department of Human Services Bridges Administrative Manual (BAM) 720 (2013).

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

- benefit overissuances 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, or
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving certain 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. *Id.*

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. Department of Human Services Bridges Administrative Manual (BAM) 710 (2009). 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, in this case the Department is not entitled to a finding of IPV with regard to its claim for Medical Assistance. The Notice of Disqualification hearing was returned as undeliverable. Thus pursuant to BAM 720, pp10 (2-1-13) the OIG request for hearing must be dismissed as it cannot proceed with the hearing due to the Notice being returned undeliverable.

As regards the FAP IPV, the claim of IPV is not supported by the record presented for two reasons. The first reason is that while the Claimant used the FAP benefits out of state and demonstration was made that he was no longer eligible for FAP as he was absent from Michigan for more than thirty day, actual intent to defraud is not shown. The time period was for 8 months and the Claimant had been receiveing FAP benefits for a long period prior to his absence from the State.

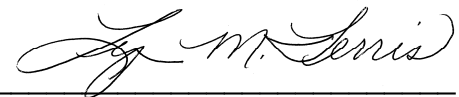
Further, because the Department cannot pursue the MA IPV as it must be dismissed, for the reason set forth above, the combined amount remaining for the FAP IPV is less than \$1,000 and the FAP OI of \$960 must be considered by itself. Because the FAP amount is less than \$1,000 and none of the other requirements for IPV when the amount is under \$1,000 were established by the evidence presented, the Department cannot establish an IPV. The other requirements to establish IPV when FAP is under \$1,000 require a prior IPV, or demonstration of trafficking, or concurrent receipt of FAP or fraud committed by a state government employee were not established. BAM 720. Thus based upon the proofs presented at the hearing, the Department is entitled to

recoup an overissuance of FAP benefits in the amount of \$960, but is not entitled to an finding that an IPV regarding FAP benefits is established.

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 \$960 from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.
- ☒ The Department is ORDERED to initiate recoupment procedures for the amount of \$960 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 9, 2013

Date Mailed: April 9, 2013

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.

LMF/tm

cc: J. Anderson
IPV
L. Ferris