

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012-73486  
Issue No.: 3052  
Case No.: [REDACTED]  
Hearing Date: February 27, 2013  
County: Wayne (18)

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**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 27, 2013, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent, Office of the Inspector General (OIG). Also present from the Department were [REDACTED], OIG Agent, and Cindy Lipkoff, Food Assistance Management Evaluator. Also present was [REDACTED], U.S. Department of Agriculture Food and Nutrition Service Sr. Program Specialist.

On April 25, 2013, this case was reassigned to Administrative Law Judge Jan Leventer for preparation of a decision and order.

Participants on behalf of Respondent included: Respondent and her daughter, Nuhad Yehia.

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

- |  |   |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC)         |
| <input type="checkbox"/> 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)?

### **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 OIG filed a hearing request on January 25, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having 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  FIP  FAP  SDA  CDC  MA benefits during the period of January 1, 2009, through June 30, 2012.
4. Respondent  was  was not aware of the responsibility to provide truthful, accurate and complete information to the Department in order to receive only those benefits to which she was entitled.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is January 1, 2009-June 30, 2012.
7. During the alleged fraud period, Respondent was issued \$5,055.78 in  FIP  FAP  SDA  CDC  MA benefits from the State of Michigan.
8. Respondent was entitled to \$5,055.78 in  FIP  FAP  SDA  CDC  MA during this time period.
9. Respondent  did  did not receive an OI in the amount of \$5,055.78 under the  FIP  FAP  SDA  CDC  MA program.
10. The Department  has  has not established that Respondent 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 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, the Department's burden of proof is to establish by clear and convincing evidence all three of the elements of IPV set forth above. The first element is that the Respondent intentionally gave untruthful information to the Department, or that she intentionally gave inaccurate or incomplete information to the Department, for the purpose of receiving benefits to which she was not entitled. BAM 720, p. 1.

Having reviewed all of the evidence in this case in its entirety, it is found and determined that the Department failed to present evidence of this level of intent at the hearing. The evidence provided consists of FAP benefit payments to Respondent, FAP purchases by the Respondent, and information regarding a store where purchases were made. There is nothing here to show that the Respondent gave false information, or concealed information, from the Department. The Department's evidence has no relevance to the issue of intent, and demonstrates only a history of benefits and purchases, not a state of mind.

Therefore, having reviewed all of the evidence in this case in its entirety, it is found and determined that the Department has failed to establish the element of intent to commit an IPV. The Department's request for IPV is DENIED.

Next, the factfinder must consider the issue of overissuance of FAP benefits. In order to establish an overissuance there must be a showing that an error happened by either the Department's or the Respondent's actions. Having reviewed all of the evidence in this case as a whole, it is found and determined that the Department has not proved an error on its own part or on behalf of the Respondent. The Department determined eligibility, provided benefits, and protected client rights, and the Respondent applied for

benefits, received them, and used them. The record is devoid of error on the part of either party to this action.

Having considered all of the evidence in this case as a whole, it is found and determined that the Department failed to establish an overissuance of benefits in this case. The Department's request for a finding of OI 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 \$5,055.78 from the following program(s)  FIP  FAP  SDA  CDC  MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: May 13, 2013

Date Mailed: May 13, 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.

JL/tm

cc:

