

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

**IN THE MATTER OF:**



Reg. No.: 2013-218  
Issue No.: 3052  
Case No.: [REDACTED]  
Hearing Date: November 28, 2012  
County: Wayne (35)

**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 November 28, 2012, from Detroit, Michigan, before Administrative Law Judge Michael Bennane. The Department was represented by [REDACTED], Agent, Office of the Inspector General (OIG).

On March 18, 2013, the case was reassigned to Administrative Law Judge Jan Leventer for preparation of a decision and order.

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 Department's OIG filed a hearing request on October 29, 2012 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, 2011, through November 30, 2011.
4. Respondent  was  was not aware of the responsibility to use FAP benefits in a particular manner, to report information truthfully and accurately, and to report changes of onformation ..
5. Respondent had no apparent physical or mental impairment that would limit his 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-November 30, 2011.
7. During the alleged fraud period, Respondent was issued \$1,946 in  FIP  FAP  SDA  CDC  MA benefits from the State of Michigan.
8. Respondent was entitled to \$1,946 in  FIP  FAP  SDA  CDC  MA during this time period.
9. Respondent  did  did not receive an OI in the amount of \$1,946 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, in order to prove IPV the Department must establish by clear and convincing evidence all three elements of IPV. The first element requires that there be an IPV act, intent to do the act, and intent to do the act for the purpose of obtaining unlawful benefits. BAM 720.

The first consideration will be whether an IPV act occurred. The Department's allegation is that the Respondent trafficked, i.e., traded or sold, FAP benefits. The Department's evidence consists of FAP benefit records, FAP purchase records of Respondent, and a description and pictures of the Subday store area. The Department presented no evidence to show that Respondent committed an actual act of trading or selling FAP benefits. The Department's evidence is circumstantial and raises a mere suspicion of trafficking. The Department's evidence is not clear and convincing as to the question whether Respondent himself committed any trafficking act on any date. Dept. Exh. 1, pp. 5-15.

Having considered all of the evidence in this case in its entirety, it is found and determined that in this case the Department failed to present clear and convincing evidence that an act of trafficking in fact occurred. The Department has failed to establish the first element of IPV. The Department's request for a finding of IPV is denied.

The second issue to be considered is whether the Department has established an overissuance of FAP benefits caused by either a Department or Respondent error. It is found and determined that there is no evidence to establish that an error occurred in this case due to the actions of either party. Accordingly, having considered all of the evidence in this case in its entirety, it is found and determined that no overissuance has occurred 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 \$1,946 from the following program(s)  FIP  FAP  SDA  CDC  MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: March 26, 2013

Date Mailed: March 26, 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:

