

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

**IN THE MATTER OF:**



Reg. No.: 20132180  
Issue No.: 3052  
Case No.: [REDACTED]  
Hearing Date: April 24, 2013  
County: Wayne (18)

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**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 April 10, 2013, from Detroit, Michigan. The Department was represented by [REDACTED], 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

- |  |   |
|--|---|
| <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

- |  |   |
|--|---|
| <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)?        |

**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 2, 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 relevant periods at issue.
4. Respondent  was  was not aware of the responsibility to report changes in household group members.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is June 1, 2009 through October 30, 2009 (the "fraud period").
7. During the alleged fraud period, Respondent was issued \$4833 in  FIP  FAP  SDA  CDC  MA benefits from the State of Michigan, and the OIG alleges that Respondent was entitled to \$2296 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$2537.
9. This was Respondent's  first  second  third alleged IPV.
10. 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 Department of Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

☒ 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 Mich Admin Code, R 400.3001 through R 400.3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- 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 is \$1000 or more, or
  - the total OI amount is less than \$1000, and
    - the group has a previous IPV, or
    - the alleged IPV involves FAP trafficking, or
    - the alleged fraud involves concurrent receipt of assistance,
    - the alleged fraud is committed by a state/government employee. [BEM 720 (February 1, 2013), p 10.]]

Subsequent to the scheduling of the current hearing and prior to the hearing date, the Notice of Hearing and accompanying documents (which established due notice) were mailed to Respondent via first class mail at the last known address and were returned by the United States Postal Service as undeliverable. Department policy dictates that when correspondence sent to Respondent concerning an IPV is returned as undeliverable, the hearing cannot proceed with respect to any program other than FAP. BAM 720, p 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

#### Intentional Program Violation

Suspected IPV means an overissuance (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. [BAM 720, p 1 (emphasis in original).]

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1.

An IPV requires that the Department establish by 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. BAM 720, p 1 (emphasis in original). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that several of her children had left or been removed from her household and continued to receive FAP benefits for children who were no longer FAP group members. During the alleged fraud period, BEM 212 provided that “[p]arents and their children under 22 years of age who live together must be in the same group regardless of whether the child has his/her own spouse or child who lives with the group.” BEM 212 (October 1, 2008), p 1.

In this case, Respondent indicated in the redetermination she signed on August 3, 2009, that there were six children in the household. The Department alleges that Respondent failed to report that her two of her children had left her home in May 2009, and that three others were removed by Children’s Protective Services (CPS) in October 2009. The only evidence presented by the Department concerning the children was documentation concerning the removal of three of the children from Respondent’s home by court order dated October 6, 2009. There was no evidence that two other children were removed in May 2009. Under these facts, where the Department did not show any changes in Respondent’s group size until October 2009, after she signed the August 2009 redetermination, and there was no evidence that Respondent failed to report this change, the Department failed to establish that Respondent intentionally withheld information concerning her group size for the purpose of maintaining or preventing reduction of FAP benefits or eligibility. Thus, the Department failed to show clear and convincing evidence that Respondent committed an IPV concerning her FAP benefits.

#### Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving 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. BAM 720, p 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 2009), p 2. 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, p 13.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (February 1, 2013), p 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6; BAM 715 (February 1, 2013), pp 1, 5; BAM 705 (February 1, 2013), p 5.

At the hearing, the Department established that \$4833 in FAP benefits were issued by the State of Michigan to Respondent from June 1, 2009 through October 31, 2009. The Department alleges that Respondent was only eligible for \$2296 in FAP benefits during this period. The Department presented FAP overissuance budgets for each of the months between June 2009 and October 2009 showing how much Respondent should have received if her FAP group size was reduced to five between June 2009 and September 2009, and to one for October 2009. However, as discussed above, the Department only established that three of Respondent's children were removed from her home in October 2009. Therefore, the Department did not establish that her FAP group members decreased to five between June 2009 and September 2009 and to one in October 2009. As such, the FAP OI budgets, which calculate an overissuance in FAP benefits to Respondent based on a decreased FAP group size of five between June 2009 and September 2009 and a FAP group size of one in October 2009, are inaccurate. Because the Department is unable to establish an overissuance of \$2537, the Department is not entitled to recoup the requested FAP benefits.


**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 \$2537 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.
- initiate recoupment procedures for the amount of \$ \_\_\_\_\_ in accordance with Department policy.
- reduce the OI to \_\_\_\_\_ for the period \_\_\_\_\_, in accordance with Department policy.

  
**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

20132180/ACE

Date Signed: 4/26/2013

Date Mailed: 4/26/2013

**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.

ACE/hw

cc:

