

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

**IN THE MATTER OF:**



Reg. No.: 2013-37  
Issue No.: 3052  
Case No.: [REDACTED]  
Hearing Date: December 13, 2012  
County: Wayne (43)

**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 December 13, 2012, from Detroit, Michigan, before Administrative Law Judge Michael Bennane. The Department was represented by [REDACTED] Agent of the Office of Inspector General (OIG). Subsequently the writing of the Decision and Order was assigned to Administrative Law Judge Jan Leventer

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

- 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 November 13, 2012 to establish an overissuance (OI) as a result of Respondent allegedly trafficking in Food Assistance Program benefits.
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 December 1, 2009, through November 30, 2011.
4. The Department's OIG indicates that the time period they are considering the fraud period is December, 2009-November, 2011.
5. During the alleged trafficking period, the Department alleges that Respondent trafficked in \$2,255.81 in  FIP  FAP  SDA  CDC  MA benefits from the State of Michigan.
6. Respondent was entitled to \$2,255.81 and to all of her benefit allotment in  FIP  FAP  SDA  CDC  MA during this time period.
7. Respondent  did  did not receive an OI in the amount of \$2,255.81 under the  FIP  FAP  SDA  CDC  MA program.
8. The Department  has  has not established that Respondent committed an IPV.
9. This was Respondent's  first  second  third 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, Rule 400.3151 through Rule 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, Rule 400.5001 through Rule 400.5015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. Department of Human Services Bridges Administrative Manual ((BAM) 700 (2012).

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 (2011).

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. BAM 720.

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, BAM 700 defines FAP trafficking as "the buying or selling of FAP benefits for cash or consideration other than eligible food." BAM 700, p. 1. In this case the Respondent admitted to the OIG Agent that she used FAP benefits for items other than eligible food approximately five times. This interview is documented in the Investigation Report. Dept. Exh. 1, p. 1. The Agent reports that Respondent said "she purchased feminine hygiene products, toilet paper, bleach and washing powder" on five occasions. Respondent also stated she did not receive a receipt for goods purchased, she did not know the marked prices of the items, and she did not know the amount she was charged for the items by the store. Dept. Exh. 1, p. 1.

It is found and determined that the Respondent's admission that she purchased non-food items with FAP benefits, clearly establishes that she trafficked in FAP benefits. The Department has established by clear and convincing evidence that Respondent engaged in FAP benefits trafficking in this case.

The next question is to determine the dollar amount of the trafficking transactions. The Department asserts that Respondent trafficked in \$2,255.91 worth of FAP benefits. This amount represents the amount Respondent spent at [REDACTED] during the fraud period. There is no evidence as to the items purchased (brand, quantity), the item prices and the money paid.

BAM 720 states that the overissuance amount for trafficking-related IPV is the value determined by one of three ways: a court decision, the individual's admission, or circumstantial evidence such as a store owner's affidavit or sworn testimony from an investigator about the amount Claimant could reasonably have trafficked in that store. BAM 720, p. 7. In this case the only information available is Respondent's admission that she bought non-food items about five times.

Coincidentally, Respondent's statement is consistent with another statement in this case submitted by the Department, the statement of [REDACTED] Dept. Exh. 1, Statement of [REDACTED] October 9, 2011, 2 pp. Neal indicates that she used SNAP, which is a food benefit from another state, four times at a fish market over a two-year period.

Similarly, in Respondent's case Respondent admits to trafficking on five occasions in two years. The similarity gives rise to an inference, albeit highly circumstantial, that Respondent's statement is true, and it shall be used to determine the amount of trafficking in this case. Accordingly, the Department shall be ordered to use Respondent's own statement to approximate the overissuance in this case.

A third issue arises in this case, in that the Department asserts that this is Respondent's second IPV. The Department submitted no evidence to establish that a first violation ever occurred. Accordingly, it is impossible to assess a second-offense violation in this case. The Department shall be ordered to reduce the offense and the penalty to a first-time violation.

**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 F AP program benefits in an amount to be determined by the Department based on the Respondent's admission that she purchased non-food items on approximately five occasions.

The Department is ORDERED to delete the OI and cease any recoupment action.

The Department is ORDERED to initiate recoupment procedures in an amount to be determined in accordance with Department policy.

The Department is ORDERED to reduce the OI to a first-time offense for the period of December 1, 2009-November 30, 2011, in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

- FIP  FAP  SDA  CDC for a period of
- 12 months.  24 months.  lifetime.



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

Date Signed: March 4, 2013

Date Mailed: March 4, 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/cl

cc:

