

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201317403
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: February 19, 2013
County: Genesee 06

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on February 19, 2013. Respondent did not appear. The record did not contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between January 1, 2010 and December 31, 2010 which the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

- (1) On October 2, 2003, Respondent was issued a Barber's license by the State of Michigan.
- (2) On April 1, 2009, Respondent submitted an Assistance Application (DHS-1171) to the Department. In the application Respondent indicated she was [REDACTED] at the [REDACTED] and made \$ [REDACTED] to \$ [REDACTED] per week.
- (3) On September 14, 2009, Respondent submitted a Semi-Annual Contact Report (DHS-1046) to the Department. Respondent indicated she was [REDACTED] at a [REDACTED] and made \$ [REDACTED] per month.

- (4) On March 1, 2010, Respondent submitted a Redetermination Form (DHS-1010) to the Department. Respondent did not report any earned income on the Redetermination Form (DHS-1010).
- (5) On February 10, 2011, DHS Case Worker Spencer was reviewing a request form Respondent for assistance to relocate to another state for employment as a [REDACTED] [REDACTED] filled out a Documentation Record (DHS-223) and recorded that: BRIDGES did not show any income since December 2009; [REDACTED] was not "convinced of employment"; and that Respondent said she (Respondent) is a [REDACTED] and had been working all along.
- (7) On December 17, 2012, the Office of Inspector General submitted the agency request for hearing of this case.

CONCLUSIONS OF LAW

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 1997 AACR 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (IPV) and the Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS DEPARTMENT POLICY All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

BAM 700 explains OI discovery, OI types and standards of promptness. BAM 705 explains agency error and BAM 715 explains client error.

DEFINITIONS All Programs

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 or CDC provider has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

MA and CDC Only

IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**
- Signs a DHS-4350 **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**
- Is found responsible for the IPV by an Administrative Law Judge conducting an IPV or debt establishment hearing.

**OVER-ISSUANCE PROCESSING
Recoupment Specialist Referral
FIP, SDA, CDC and FAP Only**

Bridges refers most client errors, CDC provider errors and suspected IPV to the RS. Use the DHS-4701, Over-issuance Referral, to refer manual OIs.

MA and AMP Only

Do not refer these OIs to the RS. See BAM 710 for suspected IPV processing.

SER and ESS Only

Refer these OIs to the RS only when IPV is suspected and a FIP, SDA or FAP OI also exists for the same period. Follow procedures in the SER manual for recoupment of SER. Follow procedures in [BEM 232](#) for Direct Support Services (DSS) OIs.

**OVER-ISSUANCE PERIOD
OI Begin Date
FIP, SDA, CDC and FAP**

The OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date the OI was referred to the RS, whichever is later.

To determine the first month of the OI period (for OIs 11/97 or later) Bridges allows time for:

- The client reporting period, per BAM 105.
- The full standard of promptness (SOP) for change processing, per BAM 220.
- The full negative action suspense period.

Note: For FAP simplified reporting, the household has until 10 days of the month following the change to report timely. See BAM 200.

**OI End Date
FIP, SDA, CDC and FAP**

The OI period ends the month (or pay period for CDC) before the benefit is corrected.

**OVER-ISSUANCE AMOUNT
FIP, SDA, CDC and FAP**

The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. (Use BAM 715 inserted below)

**OVERISSUANCE CALCULATION
FIP, SDA, CDC and FAP
Benefits Received FIP, SDA and CDC Only**

The amount of benefits received in an OI calculation includes:

- Regular warrants.
- Supplemental warrants.
- Duplicate warrants.
- Vendor payments.
- Administrative recoupment deduction.
- EBT cash issuances.
- EFT payment.
- Replacement warrants (use for the month of the original warrant).

Do **not** include:

- Warrants that have not been cashed.
- Escheated EBT cash benefits (SDA only).

Warrant history is obtained from Bridges under Benefit Issuance; see RFT 293 and 294.

FAP Only

The amount of EBT benefits received in the OI calculation is the **gross** (before AR deductions) amount **issued** for the benefit month. FAP participation is obtained in Bridges under Benefit Issuance.

**Determining Budgetable Income
FIP, SDA, CDC and FAP**

If improper reporting or budgeting of income caused the OI, use actual income for the OI month for that income source. Bridges converts all income to a monthly amount.

Exception: For FAP only, do not convert the averaged monthly income reported on a wage match.

Any income properly budgeted in the issuance budget remains the same in that month's corrected budget.

FAP Only

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. Use the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity.

For client error OIs due, at least in part, to failure to report earnings, do **not** allow the 20 percent earned income deduction on the unreported earnings.

OIG RESPONSIBILITIES

All Programs

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearing System (MAHS).
- Return non-IPV cases to the RS.

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. 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 for the FIP, SDA, CDC, MA and FAP programs combined 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 (see BEM 222), **or**
 - The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained.

The Department's evidence in this case raises more crucial questions than it answers. The Semi-Annual Contact Report (DHS-1046) Respondent submitted on September 14, 2009 still reports self employment income. The February 10, 2011 Documentation Record (DHS-223) asserts that BRIDGES shows no income for Respondent since December 2009. The March 1, 2010 Redetermination Form (DHS-1010) is the only evidence in the record related to what Respondent reported about her employment as a [REDACTED]

Since Respondent had reported earned income from working as a [REDACTED] it was required that income be verified and included in her Food Assistance Program (FAP) financial eligibility budgets. The evidence in this record implies that Respondent's FAP eligibility was impacted by her [REDACTED] income through December 2009. The January 2010 Food Assistance Program (FAP) over-issuance budget in this record indicates there was no reported earned income used to calculate her actual FAP issuance. Department policy requires that verification of an employment loss must be obtained before earned income can be removed from a recipient's Food Assistance Program (FAP) financial eligibility budget. This mismatch raises questions about the actual type of any FAP over-issuance beginning January 2010. Consider the three viable explanations that follow.

First, Respondent reported losing earned income before January 2010. Department policy requires that verification of an employment loss must be obtained before earned income can be removed from a recipient's Food Assistance Program (FAP) financial eligibility budget. The Department verified Respondent had lost her earned income. Under this scenario, any over-issuance in January would not be the result of an Intentional Program Violation (IPV) by Respondent of falsely reporting a loss of earned income and this proposed action by the Department cannot be upheld.

Second, Respondent reported losing earned income before January 2010. Department policy requires that verification of an employment loss must be obtained before earned income can be removed from a recipient's Food Assistance Program (FAP) financial eligibility budget. The Department removed the earned income from her FAP financial eligibility budget without verifying the loss. Under this scenario any over-issuance in January was caused by an agency error, not an Intentional Program Violation (IPV) and this proposed action by the Department cannot be upheld. Even if Respondent had

falsely reported losing the earned income, any over-issuance was caused by the Department's failure to follow their own policy.

Third, Respondent reported losing earned income before January 2010. Department policy requires that verification of an employment loss must be obtained before earned income can be removed from a recipient's Food Assistance Program (FAP) financial eligibility budget. The Department incorrectly recorded that Respondent had properly verified her loss of earned income. That would require that the verification Respondent submitted was fraudulent or a DHS employee fraudulently recorded that there was verification. Under these circumstances, any over-issuance in January would be an Intentional Program Violation (IPV). Determination of an Intentional Program Violation (IPV) under these circumstances would require evidence showing that either the loss of employment verification had been falsified or that the recoding of the verification was fraudulent. Under this scenario the Department has failed to meet its burden of providing clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) and this proposed action by the Department cannot be upheld.

Fourth, the Department mistakenly removed Respondent's earned income from her FAP financial eligibility budget beginning January 2010 without verifying the loss. Department policy requires that verification of an employment loss must be obtained before earned income can be removed from a recipient's Food Assistance Program (FAP) financial eligibility budget. Under this scenario any over-issuance in January was caused by an agency error, not an Intentional Program Violation (IPV) and this proposed action by the Department cannot be upheld.

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, finds that the Department HAS NOT established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in any over-issuance of benefits that the Department is entitled to recoup.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **REVERSED**.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 8, 2013

Date Mailed: March 8, 2013

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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.

GFH/tb

cc:

