

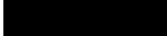
**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

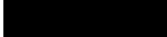
**IN THE MATTER OF:**



Reg. No.: 201328059

Issue No.: 3055

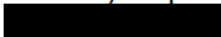
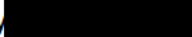
Case No.: 

Hearing Date: 

County DHS: Bay

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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 , from Lansing, Michigan. The Department was represented by  of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Chris Anderson.

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)         |

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 [REDACTED], 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 benefits during the period of [REDACTED].
4. Respondent  was  was not aware of the responsibility to report all changes to household income and composition that would affect benefit eligibility.
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 [REDACTED].
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in  FIP  FAP  SDA  CDC benefits from the State of Michigan.
8. The Department  has  has not established that Respondent committed an IPV.
9. A notice of disqualification 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 OI. BAM 700.

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. BAM 720.

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 [REDACTED] more, or
- the total overissuance amount is less than [REDACTED] 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,
  - 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 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. 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.

The Department alleges that the Respondent failed to properly report the composition of his household and failed to properly report all income that should have been attributed to the unreported group member. The Respondent signed an application for assistance on [REDACTED], and reported that his mailing address was [REDACTED]. The application indicates that the Respondent reported to the Department that he was homeless and that this address was a mailing address.

The Respondent testified that his application for benefits was truthful and that his mailing address was not his residence, but only a mailing address for the purposes of employment and an application for social security benefits.

The Department presented evidence and testimony showing that the Respondent has spent time at the address listed as his mailing address but does not dispute that the Respondent did not exclusively live at this address. This evidence shows that the Respondent worked on a special project for the management company that maintains the property at the reported mailing address. The evidence indicates that this was work was performed in exchange for credit against rent payments and that these credits would not have been available for a non-resident of that location. The evidence shows that the Respondent reported his address as being [REDACTED] to the Michigan Secretary of State. The evidence shows that the Respondent received Food Assistance Program (FAP) benefits under a separate case number from the residents of [REDACTED].

This Administrative Law Judge finds that the use of a mailing address for the purposes of employment and applying for benefits is not inconsistent with the information reported to the Department on the Respondent's application for benefits, which was that he was homeless. The evidence does not support a finding that the Respondent lived at the [REDACTED] address exclusively from [REDACTED], although having one exclusive residence is not a requirement of being a member a benefit group.

The Respondent would be classified as a mandatory group member as a parent to children living at the [REDACTED] address if he was living at this location and it would not be relevant whether he purchased and prepared food with his children. Department of Human Services Bridges Eligibility Manual (BEM) 212 (November 1, 2012), p 2. This policy defines "living with" as sharing a home where family members usually sleep and sharing any common living quarters. BEM 212. This same policy considers a person to

be temporarily absent if their location is known, there is a definite plan for return, and the absence has lasted or is expected to last for 30 days. BEM 212.

An individual is considered homeless that lacks a fixed and regular nighttime dwelling or whose temporary night time dwelling is the home of another person. Department of Human Services Bridges Eligibility Manual (BEM) 220 (March 1, 2013), p 2.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), cert den, 318 US 783 (1943).

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the evidence supports a finding that when the Respondent submitted an application for benefits on [REDACTED] that he was homeless. This Administrative Law Judge finds that the rent credits received in exchange for work performed by the Respondent do not conclusively establish the Respondent was a resident of the [REDACTED]. This Administrative Law Judge finds that better evidence that the managers of the [REDACTED] recognized the Respondent as a resident of that address would have been a copy of a lease showing the Respondent as a lessee. Instead the Department presented testimony that a manager of the Respondent's home site told the Department's representative that the rent credits were only available to residents. This presumes that the Respondent presented truthful and accurate information to the Management Company but false information to the Department.

The Department has a duty to present clear and convincing evidence that the Respondent intentionally withheld truthful information from the Department that affected his eligibility to receive benefits for the purposes of receiving benefits that he was not entitled to receive. While there is some evidence supporting a finding that the Respondent may have occasionally lived at the [REDACTED], this Administrative Law Judge finds that the Department failed to present clear and convincing evidence that the Respondent intentionally misrepresented the address where he was living for the purposes of receiving Food Assistance Program (FAP) benefits that he was not entitled to.

### **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.

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

/S/  
**Kevin Scully**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 05/09/2013

Date Mailed: 05/09/2013

**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.

KS/kl

cc:

