

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: [REDACTED]
Issue No.: 2001, 3055
Case No.: [REDACTED]
Hearing Date: February 5, 2013
County: Muskegon County DHS

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 5, 2013. Respondent appeared and testified.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits and a [REDACTED] over-issuance of Adult Medical Program (AMP) benefits between November 1, 2006 and April 30, 2007 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. Respondent intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination by intentionally failing to report her earned income from [REDACTED]
2. Respondent was clearly and correctly instructed regarding reporting responsibilities as evidenced by her signature of the May 2006 Assistance Application (DHS-1171).

3. Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.
4. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report her earned income from [REDACTED].
5. November 1, 2006 to April 30, 2007 has correctly been determined as the over-issuance period in this case.
6. As a result of the Intentional Program Violation (IPV) Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits and a [REDACTED] over-issuance of Adult Medical Program (AMP) benefits during the over-issuance period.
7. On October 11, 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 AACS R 400.3001-3015.

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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.

BAM 710 RECOUPMENT OF MA OVERISSUANCES

DEPARTMENTAL POLICY

MA Only

Initiate recoupment of an over-issuance (OI) due to **client error or intentional program violation (IPV)**, **not** when due to **agency error**

(see BAM 700 for definitions). Proceed as follows:

- Determine the OI period and amount.
- Determine the OI Type (client error or suspected IPV).
- Initiate recoupment of an OI due to client error.

If IPV is suspected, refer the case to the Office of Inspector General (OIG), if appropriate, by completing a DHS-834, Fraud Investigation Request.

Note: OIs due to IPV are recouped by OIG working directly with the local office fiscal unit.

PROCEDURES

Document your decisions and actions on the application form. Your manager must review the case record.

MA Payment Information

Complete and mail or fax the DCH-203 (MSA-203), Medical Expenditures Request, to obtain a list of MA payments in the OI period to:

Department of Community Health
Program Investigation Section

400 S. Pine Street
6th floor
Lansing, MI. 48909-7979
Fax: 517-241-9087

For changes unreported by ongoing recipients, the OI period begins the first day of the month **after** the month in which the standard reporting period **plus** the negative action period would have ended.

Overissuance Determination

When you receive the amount of MA payments, determine the OI amount. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) **or** the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts **or** the amount of MA payments, whichever is less.

For an OI due to **any other** reason, the OI amount is the amount of MA payments.

OIG Referral

The **minimum** OI amount for OIG referral is **\$500 unless** the local prosecutor sets a lower amount. OIG through regular channels informs affected local offices of lower amounts.

You may refer an IPV that is **under** the set minimum **if** the group's actions are repetitious or flagrant. The local office director or designee must approve the referral.

At this hearing Respondent testified that she gave her DHS case worker a copy of her first pay stub from [REDACTED]. The Office of Inspector General Regulation Agent, [REDACTED] who investigated the suspected Intentional Program Violation (IPV) was present at the hearing and testified that he had Respondent's DHS case file during the investigation, went through the case file and found no pay stubs in the file. [REDACTED] also pointed out that a Recoupment Specialist investigated the case file before referring it to the Office of Inspector General and would not have forwarded it as a suspected Intentional Program Violation (IPV) if there had been copies of Respondent's pay stubs in the case file.

Based on the totality of evidence in the record, Respondent's testimony is not found credible. A detailed analysis of the evidence presented, applicable

