

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

**IN THE MATTER OF:**



Reg. No.: 201333724  
Issue No.: 3055  
Case No.: [REDACTED]  
Hearing Date: June 26, 2013  
County: Genesee 06

**ADMINISTRATIVE LAW JUDGE:** Janice G. Spodarek

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on June 26, 2013, from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

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 3/12/13 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 period of 10/10/11, through 12/7/11.
4. Respondent  was  was not aware of the responsibility refrain from FAP trafficking pursuant to a DHS-1171 application for assistance most recently signed on 8/19/10 and further Respondent acknowledged that she could be prosecuted for fraud for fraudulent use of the Bridge card.
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 for one day only - October 10, 2011. On that day, Respondent cashed her FAP benefits at [REDACTED] [REDACTED] on the same date on 8 different occasions. On first two the card was swiped; on the last 6 the store inputted the card data. The store would need Respondent's pin in order to input the information to access the benefits. The Department agreed to remove 11/7/11, 11/8/11, and 12/7/11. The total for all the charges on 10/10/11 comes to \$ [REDACTED] for which the Department the alleging Respondent committed FAP trafficking. See Exhibit 51.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in  FIP  FAP  SDA  CDC  MA benefits from the State of Michigan.
8. Respondent was entitled to \$ [REDACTED] in  FIP  FAP  SDA  CDC  MA during this time period 10/10/11.
9. Respondent  did  did not receive an OI in the amount of \$ [REDACTED] under the  FIP  FAP  SDA  CDC  MA program.
10. The Department  has  has not established that Respondent committed an IPV.
11. This was Respondent's  first  second  third IPV.
12. 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. Respondent in fact had actual knowledge on the basis that Respondent filed a letter with MAHS received

on 6/24/13 stating: "My card was stolen and also reported stolen. We have not received in [REDACTED] [REDACTED] in over two years." The Department's evidence is that Respondent did report her card as [REDACTED] and a new card was issued on 10/11/11. That new card was used with the new pin in Genesee County after 10/11/11. Respondent's letter further requested a 3-way telephone call conference for the administrative hearing. The undersigned ALJ attempted to contact Respondent on 3 different occasions by conferencing on the day on the scheduled and placed for the administrative hearing. Respondent's voicemail automatically clicked on each occasion. Respondent was not credible. Personal jurisdiction is proper. Subject matter jurisdiction can be any amount and under federal law and Department policy subject matter jurisdiction is proper.

### **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 overissuance (OI). BAM 700 (2013).

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 (2013) 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 \$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. *Id.*

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. BAM (2009) 710. 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.

Clear and convincing evidence on the record indicates that Respondent acknowledged that she was not allowed to traffic her FAP benefits pursuant to her acknowledgments on the 8/19/10 application for assistance. Respondent had actually knowledge of the hearing and argued that her card was stolen. In fact, the OIG testified that this is a common practice by an individual's who leave the card at the store and have the card run through a number of times for \$ [REDACTED] on the dollar and later reported as stolen. This store had its authority revoked by the federal government for use in FAP benefits. After Respondent reported the card as stolen, a new one was issued with a new pin which was subsequently used in Genesee County. Respondent's contention that she was not in Genesee County was not credible.

The Department modified its alleged fraud time period to only include the day of 10/10/11 with 8 different transactions on the one day totaling \$ [REDACTED]. This ALJ finds that Department's evidence rises to fraud trafficking under a clear and convincing standard.

### **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 \$ [REDACTED] from the following program(s)  FIP  FAP  SDA  CDC  MA.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] 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.

/s/  
Janice G. Spodarek  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 7/16/13

Date Mailed: 7/16/13

**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.

JGS/tb

cc:

