

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

**IN THE MATTER OF:**

██████████  
████████████████████  
██████████12

Reg. No.: 2013 60070  
Issue No.: 3052  
Case No.: ██████████  
Hearing Date: October 10, 2013  
County: Wayne (57)

**ADMINISTRATIVE LAW JUDGE:** Lynn M. Ferris

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on October 10, 2013 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent 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 400.3178(5).

**ISSUES**

1. Did Respondent receive an overissuance (OI) of  
 Family Independence Program (FIP)     State Disability Assistance (SDA)  
 Food Assistance Program (FAP)         Child Development and Care (CDC)  
 Medical Assistance (MA)  
benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving  
 Family Independence Program (FIP)?     State Disability Assistance (SDA)?  
 Food Assistance Program (FAP)?         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 July 30, 2013, 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 issued by the Department.
4. Respondent  was  was not aware that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits .
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 it is considering the fraud period is June 2011 through November 2011.
7. During the fraud period, Respondent was issued \$2486.28 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$2486.28.
9. This was Respondent's  first  second  third alleged 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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services

Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- 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 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.

BAM 720 (7/1/13), p. 10.

### **Intentional Program Violation**

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 reporting responsibilities.

BAM 700 (7/1/13), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by 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, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department presented evidence that the claimant frequented the store known as ██████████ which was ultimately disqualified by the USDA for trafficking in food assistance benefits. The ██████████ had its supplemental nutrition assistance program authorization revoked as of November 29, 2011 after investigation. Exhibit 1, pp. 8. The store was essentially like a dollar store rather than a convenience foods store. The majority of the items for sale there were items that you would not find in a food store; there was no cooler and the only perishable items were convenience foods such as muffins, cupcakes, piecrust and snacks. The store carried a large non-food inventory including paper products, household supplies, tobacco, health/beauty aids, electronics, hardware, floral and gardening items. There were no poultry, fish or meat available and only a moderate stock of fruits, vegetables, breads and cereals, and poor stock of dairy products. The counter space was extremely limited and was cluttered everywhere with different products. The Department also presented as evidence the claimant's EBT usage history at ██████████ for the period of the fraud and over issuance. Many of the transactions were \$100, some \$200, and some transactions one minute apart for over \$100 each. The over issuance calculation did not include any transactions that were small or incidental. A review of the history indicates that on several occasions, for days in a row, the claimant would come in and spend a hundred dollars a day at the store. One such transaction occurred on May 6 when the claimant spent \$201 at 1 PM and another \$102.29 at 5 PM on the same day. The following day, May 7, the claimant spent another \$99. Another such transaction occurred on July 12, 2011 where the claimant spent \$216 of her FAP allotment at the store leaving a balance of \$16.48 on her EBT card. Given the limited food stocks at the store and the fact that it was primarily a dollar store, these transactions are evidence of trafficking as purchase of foodstuffs in large dollar amounts would have been found not supported by the items available. Additionally, consideration was given to the fact that numerous groceries and supermarkets abound in the area and were used from time to time by the claimant, including ██████████ and other such larger markets. Exhibit 1, pp. 20. A review of those other purchases by use of the EBT card demonstrate that the claimant spent large amounts of food assistance benefits at ██████████, most of the transactions being \$99.99 or \$100.01, also suspicious as most transactions do not come out to these specific amounts.

**Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (1/1/13), p. 2. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has established that the claimant was involved and committed trafficking with respect to the use of her food assistance benefits. As this is the Claimant's first such violation the claimant is required to be disqualified for a one-year period from receiving food assistance benefits. Therefore, it is determined that the Department's request for disqualification has been demonstrated by the evidence presented.

**Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, a review of the EBT purchases made by the claimant was reviewed at the hearing for the fraud time period by the Regulation Agent who presented the case. The Regulation Agent only included transactions during the fraud period which were more than \$50; this sum was correctly totaled to be \$2486.28 and therefore the overissuance amount is correct. Exhibit 1 pp. 28 – 29

**DECISION AND ORDER**

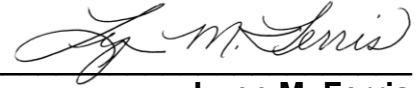
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent  did  did not commit an IPV by clear and convincing evidence.
2. Respondent  did  did not receive an OI of program benefits in the amount of \$ \_\_\_\_\_ from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$2486.28 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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**Lynn M. Ferris**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: October 28, 2013

Date Mailed: October 28, 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.

LMF/cl

cc: [REDACTED]  
[REDACTED]