

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

**IN THE MATTER OF:**

██████████  
██████████  
████████████████████

Reg. No.: 2013-39971  
Issue No.: 3055  
Case No.: ██████████  
Hearing Date: October 30, 2013  
County: Saginaw (00)

**ADMINISTRATIVE LAW JUDGE:** Eric Feldman

**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 30, 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 April 15, 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 of the responsibility to report a change in income.
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 August 1, 2011, to January 31, 2012.
7. During the alleged fraud period, Respondent was issued \$2,520 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,461 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 \$1,059.
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.
11. On May 17, 2013, a Notice of Disqualification Hearing was sent to Respondent notifying her of the scheduled hearing on June 19, 2013.
12. On June 18, 2013, Respondent requested a postponement of the hearing scheduled.

13. On June 19, 2013, an Administrative Law Judge sent Respondent an Order Granting Adjournment.
14. On September 24, 2013, a Notice of Disqualification Hearing was sent to Respondent notifying her of the rescheduled hearing on October 30, 2013.

### **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 (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 Mich Admin Code, R 400.3001 through R 400.3015.

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 (July 2013), p. 12.

### **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 (July 2013), p. 7; 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 alleges that Respondent who is a food assistance simplified reporter, committed an IPV of her FAP benefits because she failed to report her income exceeding the reporting limits, which caused an overissuance of FAP benefits.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (January 2011), p. 1.

Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 1. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2011, to January 31, 2012. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her income exceeding the reporting limits and that she intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

First, the Department presented Respondent's application dated January 25, 2011, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1. A review of the application indicates that Respondent listed two employment incomes. See Exhibit 1. However, only one of Respondent's employments is questioned in the IPV. Regarding Respondent's employment, she listed a first pay check date of February 18, 2011, she works 16-24 hours per week, she is paid weekly, and her hourly rate is \$8.00. See Exhibit 1.

Second, the Department presented Respondent's Verification of Employment dated February 18, 2011. See Exhibit 1. A review of the Verification of Employment indicates that she began employment on February 9, 2011, and her rate of pay is \$9.00. See Exhibit 1.

Third, the Department presented Respondent's State Emergency Relief (SER) application dated April 21, 2011. See Exhibit 1. The Department introduced this exhibit to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1. A review of the SER application indicated under the employment income information states that her start date is February 8, 2011, she is paid weekly, her gross earnings is \$288, and she works an average of 24 hours a week. See Exhibit 1.

Fourth, the Department presented Respondent's Semi – Annual Contact Report dated July 1, 2011. See Exhibit 1. A review of this document indicated that Respondent's gross earned income used in her FAP budget is \$154 and that if her gross earned income changed by more than \$100, then she has to report it. See Exhibit 1. Respondent, though, marked "no" to this question. See Exhibit 1. The Department is alleging that her household income did exceed the \$154 by more than \$100.00 on the Semi – Annual Contact Report.

Fifth, the Department presented an Other – Income information screen regarding her first quarter earnings from her employment. However, the income was not over the simplified reporting limits. See Exhibit 1.

Sixth, the Department presented Respondent's employment history, which included her begin date, hours worked, and wages earned from April 1, 2011 to January 27, 2012. See Exhibit 1.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. The evidence was not persuasive to show that Respondent intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

The Department's main argument was that Respondent failed to report her income exceeding the reporting limits beginning in July 2011. The Department testified that she failed to report her household income exceeding the \$154 by more than \$100 on the Semi – Annual Contact Report dated July 1, 2011. See Exhibit 1. It is clear that Respondent marked “no” to this question; however, Respondent clearly indicated in previous applications that her income exceeded the \$154 budgeted amount. For example, Respondent's original application dated January 25, 2011, she listed a first pay check date of February 18, 2011, she works 16-24 hours per week, she is paid weekly, and her hourly rate is \$8.00. See Exhibit 1. Based on this information, Respondent is reporting monthly earnings from \$512 to \$768. Also, regarding Respondent's SER application dated April 21, 2011, she indicated under the employment income information that her start date is February 8, 2011, she is paid weekly, her gross earnings is \$288, and she works an average of 24 hours a week. See Exhibit 1. Again, Resopndent is reporting that she could approximatley earn \$1,152 per month (\$288 times 4).

A review of Respondent's earnings from her employer for the time period of April 1, 2011, to January 27, 2012, indicated that she earned as low as \$328 for December 2011 to as high as \$1,248 for November 2011. See Exhibit 1. Even though Respondent did not indicate her earnings exceeding \$154 in the Semi – Annual Contact Report, she clearly reported on prior occasions an income amount that is similar to her employer's documents. Based on this information, Respondent did not intentionally withheld or misrepresented her income information as she properly reported her income information on prior occassions.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), 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 failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

### **Overissuance**

As stated previously, the Department failed to show that Respondent purposely failed to report a change in income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when agency error is present.

Simplified reporting does not affect the determination of agency error overissuances. BAM 200, p. 5.

An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) or the Department of Information and Technology staff or department processes. BAM 705 (July 2013), p. 1. Examples include available information was not used or was used incorrectly. BAM 705, p. 1.

Regarding agency error overissuances, the OI period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the RS, whichever is later. BAM 705, p. 5. To determine the first month of the OI period for changes reported timely and not acted on, the Department allows time for: the full standard of promptness (SOP) for change processing and the full negative action suspense period. BAM 705, p. 5. Based on the above policy, the Department would apply the 10-day processing period and the 12-day negative action suspense period. BAM 705, p. 5.

Applying the above standard and in consideration of Respondent's employment starting in February 2011, it is found that appropriate OI begin date is August 1, 2011.

Additionally, 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. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 705, p. 6.

For FAP cases, if improper budgeting of income caused the OI, the Department uses actual income for the past OI month for that income source. BAM 705, p. 7. The Department converts income received weekly or every other week to a monthly amount. BAM 705, p. 7. The Department will automatically convert based on answers to

onscreen questions. BAM 705, p. 7. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 705, p. 7.

In this case, the Department presented OI budgets from the period of August 2011 to January 2012. See Exhibit 1. Monthly budgets were provided for the FAP programs using the employer's submitted documents. See Exhibit 1. A review of the OI budgets found them to be inaccurate because the Department applied the incorrect policy. For client error OIs due, at least in part, to failure to report earnings, the Department does not allow the 20% earned income deduction on the unreported earnings. BAM 720, p. 10. The Department applied this client error policy to the OI budget and did not allow the 20% earned income deduction to her alleged unreported earnings. However, this is incorrect. In the present case, Respondent did report such earnings appropriately and the 20% earned income deduction should be applicable in this case. Moreover, a review of agency error overissuances policy, does not reference any policy to not allow the 20% earned income deduction.

Based on the foregoing information, the Department presented OI budgets that were not properly calculated from the period of August 2011 to January 2012. There is clearly an overissuance present, however, the Department will be ordered to recalculate the overissuance for the time period of August 2011 to January 2012.

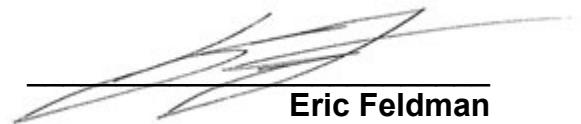
### **DECISION AND ORDER**

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 by clear and convincing evidence.

The Department is ORDERED to

- 1) recalculate the overissuance for the time period of August 2011 to January 2012, in accordance with Department policy and
- 2) notify the Respondent in writing of the FAP overissuance amount, in accordance with Department policy.



**Eric Feldman**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: November 18, 2013

Date Mailed: November 18, 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.

EJF/cl

cc: [REDACTED]  
[REDACTED]