

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

**IN THE MATTER OF:**

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

Reg. No.: 2013 60110  
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 of the responsibility to report income earned from self-employment .
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 **FAP** April 1, 2007 to October 31, 2007 \$2428; and June 1, 2008 through September 30, 2008 \$724; total FAP OI is \$3152 (fraud period).
7. The Department's OIG indicates that the time period it is considering the fraud period is **FIP** April 1, 2007 through September 30, 2007 - \$3558 (fraud period).
8. During the fraud period, Respondent was issued \$5734 in  FIP  **FAP**  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2582 in such benefits during this time period.
9. During the fraud period, Respondent was issued \$3558 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.
10. The Department alleges that Respondent received an OI in  FIP  **FAP**  SDA  CDC  MA benefits in the amount of \$3152.
11. The Department alleges that Respondent received an OI in  **FIP**  FAP  SDA  CDC  MA benefits in the amount of \$3558.
12. This was Respondent's  first  second  third alleged IPV.

13. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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 Claimant received earned income from self-employment from a deli she operated. Based upon the verification of employment filed September 26, 2008, after the income was earned and the restaurant was closed, the Claimant provided her 2007 income tax return and actual income and expense for June 2008 through September 2008. It is clear that the Claimant did not report her earned income for the period February 2007 through October 31, 2007 at which time Claimant was receiving both FIP and FAP benefits even though she was self-employed and no income was being reported.

Based upon The claimant's income tax return for the period, it is clear that the Claimant earned \$\$20,000 in gross income and \$15,233 in net income, none of which was reported. Exhibit 1pp. 18-24. Therefore the Department has established that the Claimant received both FIP and FAP benefits she was otherwise not entitled to receive due to her failure to report earned income over a 7 month period. The Claimant did not provide any disclosure of this income until September 2008 and thus fraud is established as Claimant waited 19 months before she reported the income. As will be explained below, although the Department sought additional recoupment of the FAP benefits for June 1, 2008 through September 30, 2008 on the same premise, that the Claimant failed to report her income, a review of the DHS431 Self-Employment Income

and Expense Statements do not support that the Claimant received any income for this period and was operating at a loss. Exhibit 1 pp. 25 – 32.

Also during this period, the Claimant filed three applications for public benefits. The first application is dated December 2006 and indicated that Claimant had lost her employment. The application demonstrates that the Claimant was aware that changes in employment had to be reported. The Claimant's verification of employment indicates that she began employment on February 26, 2007 but only reported same in 2008 when the verification was filed with the Department. Lastly, the Claimant's application in January 2008 notes that she advised the Department that her business was opening in March, 2008 but at no time until September 2008 did she report this income.

### **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 (7/1/13), 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 demonstrated by its proofs that the Claimant received both FAP benefits from April 2007 through October 31, 2007 and FIP benefits from April 1, 2007 through September 30, 2007 without reporting her income from self-employment. The failure to report covered an extended period and thus intent to fraudulently obtain these benefits was shown. Therefore the Department is entitled to a determination that Claimant be disqualified from both the FIP and FAP benefit programs for a period of one year, this being the Claimant's first disqualification for both FIP and FAP benefit programs.

### **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, the Department calculated the self-employment income received by the Claimant in 2007 based upon the income tax return provided by Claimant in 2008. The Department did not provide a specific basis for how it determined the unreported earned income but the Department used \$1038 monthly. Exhibit 1 pp. 72-103, The tax return provided is the only basis the Department had to determine income and it was the only evidence produced of income at the hearing. A review of the return does not come up with the monthly figure used by the Department. Policy found in BEM 505 dictates how self-employment income is to be determined. It provides:

Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for Farm Loss amounts. See "Farming Expenses" below.

Allowable expenses are the higher of:

- 25% of the total proceeds, or
- Actual expenses if the client chooses to claim and verify the expenses. BEM 500, pp.14, (4/1/07)

Using either of these formulas comes up with a different monthly unreported earned income amount **higher** than the \$1038. If the gross income is used, the result is \$1333; ( $\$20,000 \times .75 = \$15,000 \div 12 = \$1250$ ). Using the Net income amount as reported in the return where the expenses as reported are already removed from the income of \$15,233, yields a monthly amount of \$1269; ( $\$15,233 \div 12 = \$1269$ ). Notwithstanding this discrepancy, the Department sought an overissuance of \$2428 in FAP for the period 4/1/07 through 10/31/07 and \$3558 from 4/1/07 to 9/30/07 in FIP. The budgets presented were correct and demonstrated that the Claimant was entitled to no FIP benefits for the period as her income exceeded the FIP limit and Claimant also received more FAP benefits than she was entitled to receive as no income was being credited to the Claimant when computing her FAP benefits. Thus, if anything the Department **under calculated** the FAP benefits but did establish that it is entitled to **at least** the amount it sought.

As regards the benefits covering the period June 2008 through September 2008 the Department has not met its burden to establish that the Claimant was overissued FAP benefits during this time period. The Claimant provided actual expenses and income for the period and therefore the department should have used the actual expenses as it is required to use actual expenses or 25%, whichever amount is higher. Using the actual reported expenses based upon a review of the DHS431 Self-Employment Income and Expense Statements, it is apparent that the Claimant was operating at a loss except for June 2008 when she had income of \$290. Simply put, if all the expenses exceed the income for the month there is no income and thus the request for an overissuance of FAP for this time period of \$724 cannot be sustained on the proofs presented. The Self-Employment Reporting forms do not support that the Claimant received any income for this period, and demonstrate that the Claimant's business was operating at a loss and thus no overissuance occurred for any of the months in question. Exhibit 1 pp. 25 – 32 and pp. 104 - 116. PEM 500 PP. 13 (7/1/07)

### **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 \$5986 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

delete the OI of \$724 and cease any recoupment action for the period 6/1/18 through 9/30/08 for FAP benefits.

initiate recoupment procedures for the amount of \$5986 (\$2428 FAP and \$3558 FIP 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: November 4, 2013

Date Mailed: November 4, 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:   
