

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

**IN THE MATTER OF:**

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

Reg. No.: 2013-67713  
Issue No.: 3055; 6052  
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).

Participants on behalf of Respondent included: Respondent.

**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 September 10, 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 household members and unreported 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 original time period it is considering the fraud period for the CDC to be from December 1, 2010 to September 30, 2011, and the FAP to be from March 1, 2011 to September 30, 2011.
7. The Department's OIG amended the time period for both the CDC and FAP to be February 1, 2011 to September 30, 2011.
8. During the alleged original fraud period, Respondent was issued \$11,798.98 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$4,839 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$6,959.98.
10. This was Respondent's  first  second  third alleged IPV.
11. 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 (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 Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 committed an IPV of her FAP/CDC benefits because she failed to report persons in the home (father of her children) and the father's unreported unearned income. Specifically, the Department testified that the Respondent and the father of her children both had separate FAP cases during the alleged fraud period. Moreover, the Department alleges that the Respondent failed to report that the father was residing with her during the alleged fraud period in which they have two children together. The Department inferred that this made him a mandatory group member with the Respondent because they shared children in common. Moreover, the Department testified that the father received unearned income from the Social Security Administration (SSA), which was not reported nor budgeted into Respondent's FAP case.

The Department also testified that Respondent was a simplified reporter and that she did not exceed her reporting limit until March 2011. Additionally, due to the fact that the father was in the home, the Department testified that it negated the Respondent's need reason for CDC benefits.

Based on the foregoing information, the Department testified that Respondent was ineligible to receive FAP and CDC benefits while residing with the father of her children. The Department testified that an IPV and overissuance is present in this case and that the overissuance should be divided by two leaving both parties equal portions to repay.

It should be noted that a separate Administrative Hearing (Registration #2013-67714) was held to address the father of her children IPV overissuance. Also, during the hearing, the Department amended the time period it is considering the fraud period to be February 1, 2011 to September 30, 2011. The Department testified that it spoke to the Respondent and discovered the father was not residing with the mother of her children until February 1, 2011. The Department stated that the father was paroled in October 2010 and lived in halfway houses for a couple of months. Also, the father was incarcerated in the month of January 2011 and was released in February 2011, where he then moved in with Respondent.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Income reporting requirements are limited to the following: the starting or stopping a source of unearned income. BAM 105, p. 7.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in: persons in the home and/or address and shelter cost changes that result from the move. BAM 105, p. 7.

Additionally, for FAP cases, children include natural, step and adopted children. BEM 212 (September 2010), p. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. BEM 212, p. 1.

Finally, 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.

In the present case, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report the changes and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP/CDC program benefits or eligibility.

First, the Department presented Respondent's Redetermination dated August 19, 2010, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1.

Second, the Department presented a Social Security Administration document/driver's license dated October 27, 2010. See Exhibit 1. This document showed the father's reported address to be of the Respondent's. See Exhibit 1.

Third, the Department presented the father's application dated October 28, 2010. See Exhibit 1. A review of the document showed that the father reported his mailing address/phone number to be the mother of his children. See Exhibit 1. A review of the document also indicated that he was homeless, he listed himself as the only group member, and he has a learning disability. See Exhibit 1. Finally, this document indicated that the Respondent completed the application for him. See Exhibit 1.

Fourth, the Department presented a State Emergency Relief (SER) application dated November 5, 2010, which did list the father of her children as a household member. See Exhibit 1. The Department presented another SER application dated November 19, 2010, which also did not list the father as a household member. See Exhibit 1. Additionally, the Department also presented multiple applications throughout the hearing packet to show the Respondent did not list the father of her children as a household member before, during, and after the alleged fraud period. See Exhibit 1.

Fifth, the Department presented a documentation record from the agency dated April 28, 2011. See Exhibit 1. This document indicated that the father was residing with a friend and kids and buys/eats/prepares meals separately as of February 1, 2011. See Exhibit 1. It should be noted that the friend refers to the Respondent. See Exhibit 1. There are additional notes on the documentation record that indicated Respondent is the father of the two children and that there is evidence that he moved in with them in October 2010. See Exhibit 1.

Sixth, the Department presented a FAP benefits redetermination filing record dated September 16, 2011, which showed that the father listed his address as the Respondent's. See Exhibit 1. The Department also presented a SER application dated September 29, 2011, which the Respondent listed the father of her children as a household member. See Exhibit 1. However, on an application dated November 7, 2011, Respondent did not list the father as a household member. See Exhibit 1.

Seventh, the Department presented an SOLQ report printed on March 23, 2012, which indicated his address to be of the Respondent. See Exhibit 1.

At the hearing, Respondent testified that the father of her children did live in the home from February 2011 to April 2011. On April 1, 2011, Respondent testified that the father left the home when his monitoring device was removed due to his incarceration. Moreover, Respondent testified that he was not in the home when he reported the change in April 28, 2011. Respondent testified that the father kept using her address even though he was not present in the home.

Additionally, Respondent testified that when she applied for SER benefits in September 2011, she discovered that the father was still using her address. Respondent testified that her DHS caseworker told her that she had to include him as a household member in the application because he was using her address.

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

The Respondent provided credible testimony that the father of the children was only in the home from February 2011 to April 2011. Moreover, the Department presented credible evidence that the father first reported the changes in the documentation record dated April 28, 2011. See Exhibit 1. This evidence is persuasive that the reported changes did not occur until April 2011. But this evidence does not indicate the Respondent intentionally withheld or misrepresented the information. Even though the reported changes are not timely, the Department was eventually notified of the reported changes. Based on this information, Respondent did not intentionally withhold or misrepresent the information as the changes were eventually reported in April 2011.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP and CDC program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP and CDC 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 and CDC benefits. Therefore, Respondent is not subject to a disqualification under the FAP and CDC program.

### **CDC 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. 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 720, p. 8.

As previously stated, the Department failed to establish that Respondent committed an IPV of CDC benefits. However, the Department is still pursuing an OI for the CDC benefits. Due to the fact that the father was in the home, the Department testified that it negated the Respondent's need reason for CDC benefits.

At the hearing, Respondent testified that the father of her children has mental impairments. Respondent presented a document from the bank which indicated she was the payee for the father. See Exhibit A. Respondent testified that she handled his financial issues due to his mental impairments. Respondent testified that she would not leave her children with the father due to these issues. A review of the record does indicate the father receives disability benefits from SSA. See Exhibit 1. Also, the father's application dated October 28, 2010, indicated that he has a learning disability. See Exhibit 1.

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. BEM 703 (January 2011), p. 2. P/SPs means the following persons who live in the home and are unavailable to care for the child due to a valid need reason: the child's legal or biological parent(s). BEM 703, pp. 2-3.

There are four valid CDC need reasons. Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. BEM 703, p. 3. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of:

1. Family preservation.
2. High school completion.
3. An approved activity.



#### 4. Employment.

BEM 703, p. 3.

In households with two parent/substitute parents (P/SP), there may be instances when both are unavailable at the same time, due to different need reasons. BEM 703, p. 4. Determination of eligibility begins with the need reason of family preservation. CDC payments may be approved for P/SPs who are:

- Unavailable to provide care because they are participating in a court-ordered rehabilitative activity.
- Unavailable to provide care because they are required to participate in the treatment activity of another member of the CDC program group, the CDC applicant or the CDC applicant's spouse who lives in the home.
- Unable to provide care due to a condition for which they are being treated by a physician.

BEM 703, p. 4. Allowable conditions may include disability or mental disturbance. BEM 703, p. 4. There is a DHS-4575, Child Care Family Preservation Need Verification that must be used to document the family preservation child care need. BEM 703, p. 4.

Based on the foregoing information, Respondent has established a family preservation need reason during the alleged fraud period. First, it is reasonable that the father was unavailable to watch the children due to the Respondent providing credible testimony that the father was attending some form of treatment. Second, the evidence is persuasive that the father is suffering from a disability or mental disturbance. There is evidence that the father is a recipient of SSI benefits due to a disability. Moreover, the father provided credible testimony that he suffers from a mental impairment.

In summary, there is a valid need reason for the Respondent that the father is unavailable to care for the children and thus, the CDC payments were valid. There is no CDC overissuance present in this case.

#### **FAP Overissuance**

At the hearing, the Department presented OI budgets which would have reflected a group size of four (Respondent, the father, and two children) for the amended fraud period of February 2011 to September 2011. See Exhibit 1. Moreover, the overissuances were calculated based on what both parties should have received as one combined FAP group. The Department testified that the overissuance should be divided by two leaving both parties equal portions to repay.

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.

For FAP cases, when the OI involves two or more FAP groups which should have received benefits as one group, determine the OI amount by: adding together all benefits received by the groups that must be combined, and subtracting the correct benefits for the one combined group. BAM 715, p. 5 and BAM 720, pp. 6-7.

As stated previously, the Department failed to show that Respondent purposely failed to report the changes. Thus, no IPV was committed. However, it is also found that no overissuance is present. The Department only presented credible evidence that father was residing with the Respondent from February 2011 to April 2011. This evidence was based on the documentation record dated April 28, 2011, where the father contacted the Department with a reported change. Moreover, Respondent credibly testified that the father of the children was only in the home from February 2011 to April 2011.

In regards to the Respondent residing from February 2011 to April 2011, Department policy states different overissuance requirements regarding simplified reporting. Regarding simplified reporting, the Department determines the first month of the overissuance as two months after the actual monthly income exceeded the simplified reporting (SR) limit. BAM 715, p. 5. This accounts for the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period. BAM 715, p. 5.

Non simplified reporting policies states that the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 720, p. 7.

Applying the above standards and in consideration that the father moved in with Respondent in February 2011, the appropriate OI period begin date is April 1, 2011. BAM 715, p. 5; BAM 720, p. 7. However, as stated above, the Respondent credibly testified that the father left the home on April 1, 2011. Thus, the OI period begin date is after the father left the home. Thus, no FAP overissuance is present in this case and the Department cannot seek any recoupment action.

### **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.
2. Respondent  did  did not receive an OI of FAP and CDC program benefits.

The Department is ORDERED to

delete the OI and cease any recoupment action.



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

Date Signed: November 19, 2013

Date Mailed: November 19, 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]