

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

**IN THE MATTER OF:**

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

Reg. No.: 2013-67714  
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).

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 group composition.
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 is October 1, 2010 to August 31, 2011.
7. The Department's OIG amended the fraud period to February 1, 2011 to September 30, 2011.
8. During the amended alleged fraud period, Respondent was issued \$4,414 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2,944 in such benefits during this time period.
9. The Department alleges that Respondent received for the amended OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$1,470.
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 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 his FAP benefits because he failed to report persons and/or address and shelter cost changes that result from the move in the home. Specifically, the Department testified that the Respondent and the mother of his children both had separate FAP cases during the alleged fraud period. Moreover, the Department alleges that the Respondent failed to report that he was residing with her during the alleged fraud period in which they have two children together. The Department inferred that this made the Respondent a mandatory group member with her because they shared children in common. Thus, the Department testified that Respondent was ineligible to receive FAP benefits while residing with the mother of his 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 # [REDACTED]) was held to address the mother of his children's IPV overissuance. It should also be noted that both parties reported their incomes on their separate cases and unreported income is not a factor in this case.

Also, during the hearing, the Department amended the the fraud period to February 1, 2011 to September 30, 2011. The Department testified that it spoke to the Respondent and discovered he was not residing with the mother of his children until February 1, 2011. The Department stated that the Respondent was paroled in October 2010 and lived in halfway houses for couple of months. Also, the Respondent was incarcerated in the month of January 2011 and was released in February 2011, where he then moved in with the mother of his children.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2011), 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.

In the present case, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report that he was residing with the mother of his children and that he intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

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

Second, the Department presented Respondent's application dated October 28, 2010, to show that the Respondent was aware of his responsibility to report changes. See Exhibit 1. A review of the document showed that Respondent reported his mailing address/phone number to be the mother of his children's. 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 mother of Respondent's children completed the application for him. See Exhibit 1.

Third, the Department presented a documentation record from the agency dated April 28, 2011. See Exhibit 1. This document indicated that he 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 mother of his children. 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.

Fourth, the Department presented another documentation record from the agency dated October 20, 2011, in which he reported that he moved into his mother's home on October 10, 2011. See Exhibit 1.

Fifth, the Department presented an SOLQ report printed on March 21, 2013, which indicated his address to be the mother of his children's. See Exhibit 1.

At the hearing, the Respondent testified that he was receiving FAP benefits and a group size of one during the alleged fraud period. Respondent agreed that he was living at a different address and incarcerated during the period of October 2010 to January 2011. Also, Respondent could not recall if he contacted the Department on April 28, 2011, in which he reported living with the mother and children as of February 1, 2011. However, Respondent testified that he could recall living with her, but based on his limited

memory, it appeared that he was there for a short time. Respondent provided limited testimony as he could not recall some of the information and/or documents completed.

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 the income information and persons in the home for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

The Department presented credible evidence that Respondent first reported the changes in the documentation record dated April 28, 2011. See Exhibit 1. This evidence is persuasive that the Respondent did not report the changes that occurred in February 2011 until April 2011. But, this evidence does not show that the Respondent intentionally withheld or misrepresented the information. Even though Respondent did not report the changes timely, he eventually notified the Department of the reported changes. Moreover, it is apparent that the Respondent only had a temporary arrangement with the mother after being released from prison. Based on this information, Respondent did not intentionally withhold or misrepresent the information as he eventually reported this information 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 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.

### **Overissuance**

At the hearing, the Department presented OI budgets which would have reflected a group size of four (Respondent, the mother, 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 Respondent was residing with the mother of his children from February 2011 to April 2011. This evidence was based on the documentation record dated April 28, 2011, where the Respondent contacted the Department with a reported change. However, the Department failed to provide additional evidence that Respondent continued to reside with the mother of his children.

In summary, the Department failed to provide any written and/or credible evidence from the Respondent that he continued to reside with the mother of his children from May 2011 to September 2011.

In regards to the Respondent residing from February 2011 to April 2011, Department policy states that the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the RS, whichever is later. BAM 720, p. 7. To determine 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. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, pp. 3-4; BAM 720, p. 7.

Applying the above standard and in consideration that Respondent moved in with mother of the children in February 2011, the appropriate OI period begin date is April 1, 2011. BAM 715, pp. 3-4; BAM 720, p. 7. However, as stated above, the Department failed to provide any additional documentation and/or evidence of an overissuance subsequent to April 2011. The budget for OI indicates that the overissuance is \$237,

which is still below the client overissuance threshold of \$250 anyways. See Exhibit 1 and see BAM 715, p. 5.

In summary, no overissuance is present in this case and the Department cannot seek an recoupment action.

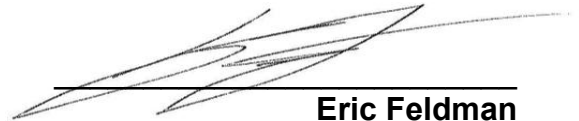
**DECISION AND ORDER**

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 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 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]