

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

**IN THE MATTER OF:**

██████████  
██████████  
██████████

Reg. No.: 2013-68108  
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 September 11, 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 April 30, 2012.
7. During the alleged fraud period, Respondent was issued \$4,050 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$931 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 \$3,119.
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 (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.

In this case, the Department alleged that Respondent committed an IPV because he used FAP benefits when he failed to report additional income. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the hearing, the notice and documents were returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 10. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

### **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 his FAP benefits because he failed to report that his son (FAP group member) had earned income and also failed to report that his daughter (FAP group member) received additional unearned income, 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 April 30, 2012. At the hearing, the Department presented evidence to

show why it believed the Respondent was aware of his responsibility to report the income exceeding the reporting limits and that he intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility. Specifically, the Department testified that the Respondent failed to report his son stopped working at his previous employer and also failed to report that his son began working at a new employer in Texas. The Department testified that the Respondent failed to report his son's earned income from the employer. It should be noted that his son was part of the FAP group even though he was out of state during the entire alleged fraud period. Also, the Department testified that the Respondent failed to report additional unemployment compensation that his daughter was receiving than what was reported originally.

First, the Department presented Respondent's application dated March 23, 2009, to show that the Respondent was aware of his responsibility to report changes. See Exhibit 1.

Second, the Department presented Respondent's State Emergency Relief (SER) application dated July 26, 2011. See Exhibit 1. A review of the SER application indicated that the Respondent failed to report his son's earned income from his employment. See Exhibit 1. However, the SER application did indicate that Respondent's daughter was receiving \$429 every two weeks in unemployment compensation. See Exhibit 1.

Third, the Department presented Respondent's SER application dated September 9, 2011. See Exhibit 1. A review of the SER application indicated that the Respondent failed to report his son's earned income from his employment. See Exhibit 1. However, the SER application did indicate that Respondent's daughter was receiving \$449 every two weeks in unemployment compensation. See Exhibit 1.

Fourth, the Department presented Respondent's Semi – Annual Contact Report dated September 9, 2011. A review of this document indicated that Respondent's gross earned income used in his FAP budget is \$70 and that if the gross earned income changed by more than \$100, then he has to report it. See Exhibit 1. Respondent, though, marked "no" to this question. See Exhibit 1. The Department is alleging that his household income did exceed the \$70 by more than \$100.00 on the Semi – Annual Contact Report.

Additionally, Respondent marked "no" to the question if whether the household's gross unearned income changed by more than \$50 since the last reported change. See Exhibit 1. The Department is alleging that Respondent's daughter's unemployment compensation exceeded the reporting criteria by \$50 or more.

Fifth, the Department presented Respondent's SER application dated November 22, 2011. See Exhibit 1. A review of the SER application indicated that the Respondent failed to report his son's earned income from his employment. See Exhibit 1. However,

the SER application did indicate that Respondent's daughter was receiving \$457 every two weeks in unemployment compensation. See Exhibit 1.

Sixth, the Department presented Respondent's Redetermination dated March 29, 2012. See Exhibit 1. This document only indicated Respondent's daughter's unemployment compensation in the amount of \$446. See Exhibit 1.

Seventh, the Department presented Respondent's daughter's unemployment compensation history showing that she received \$456 every two weeks from March 14, 2011, ongoing. See Exhibit 1. Also, the Department presented Respondent's son's employment records.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The evidence is sufficient to establish that Respondent failed to report his son's income and his daughter's additional unemployment compensation and that he intentionally withheld or misrepresented this income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

First, the SER application dated July 26, 2011, reported that Respondent's daughter was receiving \$429 every two weeks in unemployment compensation. See Exhibit 1. However, the unemployment compensation document actually shows she was receiving \$456 every two weeks. See Exhibit 1. Moreover, the SER application dated September 9, 2011, reported that Respondent's daughter was receiving \$449 every two weeks in unemployment compensation. See Exhibit 1. A review of the unemployment compensation document indicates that she was receiving \$456 every two weeks. See Exhibit 1. This difference is not excessive. Moreover, Respondent also appropriately reported his daughter's unemployment compensation in other applications. This evidence alone could not establish an IPV of FAP benefits.

Nevertheless, it is Respondent's failure to report his son's earned income which results in an IPV. On May 2, 2012, the employer submitted the Respondent's son's personnel and payroll records. See Exhibit 1. The employer indicated that Respondent's son had been employed since June 2, 2011. Moreover, the records provided a history of his earned income and showed that he was employed from June 2011 to April 2012. See Exhibit 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).

The Department presented evidence to establish Respondent's intent during the alleged IPV usage. The Department presented multiple benefit applications where Respondent failed to report his son's earned income during the alleged fraud period. For example, the Department presented Respondent's SER application dated September 9, 2011.

See Exhibit 1. A review of the SER application indicated that the Respondent failed to report his son's earned income from his employment. See Exhibit 1. Contradictory, though, to the SER application was the employer's information which clearly indicated that his son was receiving compensation in September 2011. See Exhibit 1. Another example includes Respondent's Redetermination dated March 29, 2012. See Exhibit 1. This document only indicated Respondent's daughter's unemployment compensation in the amount of \$446. See Exhibit 1. There was no mention of his son's income, even though the employer indicates the son was employed in March 2012. It should be noted that in all of the above applications, Respondent listed his son as a group member and failed to report his son's income. This is persuasive evidence that Respondent committed an IPV of his FAP benefits because he failed to report his son's employment, which caused an overissuance of FAP benefits.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report his son's unreported income and his daughter's additional unearned income and that he intentionally withheld or misrepresented this income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

### **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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

### **Overissuance**

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits.

The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 4. For failure to report income over the limit, the first month of the overissuance is two months

after the actual monthly income exceeded the limit. BAM 200, pp. 4-5. Groups report if their actual income for a month exceeds 130 percent of poverty level. BAM 200, p. 5.

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 (July 2013), 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.

Applying the above standard and in consideration of Respondent's son starting employment in June 2011, the Department determined that the OI period began on August 1, 2011. See Exhibit 1. It is found that the Department applied the appropriate OI begin date.

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 720, p. 8.

For FAP cases, if improper reporting or budgeting of income caused the OI, the Department uses actual income for the OI month for that income source. BAM 720, p. 9. The Department converts all income to a monthly amount. BAM 720, p. 9. An exception for FAP only states that the Department does not convert the averaged monthly income reported on a wage match. BAM 720, p. 10. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 720, p. 10. Also, 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.

In this case, the Department's OIG indicates that the time period it is considering the fraud period is August 1, 2011 to April 30, 2012. However, the Department only presented an OI budget from the period of November 2011 to April 2012. See Exhibit 1. The Department failed to provide OI budgets for August, September, and October of 2011. Thus, the OI period will only include November 2011 to April 2012.

Consequently, the Department presented OI budgets from the period of November 2011 to April 2012. Monthly budgets were provided for the FAP programs using the employer's submitted documents and the unemployment compensation records. See Exhibit 1. A review of the OI budgets found them to be fair and correct. The Department established that from November 2011 to April 2012 the Respondent was issued \$2,700 in FAP benefits. After budgeting the son's income and unemployment compensation, the corrected total amount of FAP benefits issuance was \$7. The overissuance was established to be \$2,693 in FAP benefits. See Exhibit 1. Thus, the Department is entitled to recoup \$2,693 of FAP benefits.

It should be noted that the April 2012 budget stated that Respondent's son earned \$424.16 gross on 4/13/12 and \$567.53 gross on 4/27/12. See Exhibit 1. However, the



employer's records indicated greater amounts earned for these two pay periods. Nevertheless, this is harmless error as the OI budget for April 2012 was calculated with lesser amounts.

**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 program benefits in the amount of \$2,693 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$2,693 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.



**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:   
