

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: [REDACTED]
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County DHS: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on [REDACTED] from [REDACTED]. The Department was represented by [REDACTED] 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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) Food Assistance Program (FAP)
benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving:
 Family Independence Program (FIP) Food Assistance Program (FAP)

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 ██████████, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 FAP FIP benefits during the period of ██████████ through ██████████.
4. On the Assistance Application signed by Respondent on ██████████ Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Office of Inspector General indicates that the time period they are considering the fraud period is ██████████ through ██████████.
8. During the alleged fraud period, Respondent was issued \$ ██████ in FAP FIP benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP FIP benefits from the State of ██████████.
10. The Department has has not established that Respondent received concurrent benefits and thus committed an IPV.
11. A notice of disqualification 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence

Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 1999 AC, Rule 400.3001 through Rule 400.3015.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700.

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 their reporting responsibilities.

IPV is suspected when there is 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.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720.

Clients that commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. 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 concurrent receipt of benefits. BAM 720.

The Respondent signed an application for Food Assistance Program (FAP) benefits on ██████████, and was aware or should have been aware of his duty to report any change of residency to the Department within ten days. The Department made the Respondent's monthly Food Assistance Program (FAP) benefits available for him each month from ██████████ through ██████████. The Respondent used his Food Assistance Program (FAP) benefits from ██████████ through ██████████.

Because of a routine review of the Respondent's benefits case, the Department discovered that the Respondent had applied for and was approved for Food Assistance Program (FAP) benefits issued by the state of ██████████ beginning in ██████████. Therefore, the Respondent was issued Food Assistance Program (FAP) benefits by both the state of Michigan and the state of ██████████ from ██████████, through ██████████.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720.

A client error overissuance occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department has not presented clear and convincing evidence that the Respondent intentionally withheld his intent to become an ██████████ resident from the Department for the purposes of receiving Food Assistance Program (FAP) benefits concurrently from both states. The evidence is consistent with a client error and that the Respondent mistakenly failed to report his change of residency or application for benefits in ██████████. The fact that the benefits were available for his use after becoming a ██████████ resident does not establish that he intentionally withheld information from the Department for the purposes of taking advantage of these benefits at a later date.

[REDACTED]/KS

Therefore, the Department has established that the Respondent received an overissuance of Food Assistance Program (FAP) benefits, but has failed to establish an Intentional Program Violation (IPV) of the Food Assistance Program (FAP).

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.
 2. Respondent **did** did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP FIP.
- The Department is **ORDERED** to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

/s/
Kevin Scully
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 03/13/2013

Date Mailed: 03/13/2013

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.

KS/kl

cc:

[REDACTED]