

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 17, 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.
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 (i) July 1, 2010, through September 30, 2010, and (ii) January 1, 2011, through December 31, 2011.
7. The Department alleges that Respondent received a \$2,709 OI of FAP benefits: \$457 for the period between July 1, 2010, and September 30, 2010, and \$2,252 for the period between January 1, 2011, and December 31, 2011.
8. This was Respondent's first second third alleged IPV.
9. 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 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 (July 2013), p. 12.

In this case, the Department alleged that Respondent committed an IPV concerning his FAP case because he failed to report earned income to the Department in accordance with Department policies. At the hearing, the Department testified that Respondent's last known address was verified by the United States Post Office on June 12, 2013. Subsequent to the scheduling of the current hearing, the Notice of Hearing was mailed to Respondent via first class mail at the address identified by the Department as the last best known address. The United States Postal Service returned the notice as undeliverable. When notice of an 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. 12. Thus, the hearing 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 committed an FAP IPV because he intentionally failed to report employment with, and income from, ██████████ ██████████. In support of its case, the Department presented (i) a printout from the Work Number, a Department-accessible database containing client employment information voluntarily reported by employers, showing that Respondent was employed by, and received employment income from, ██████████ between May 7, 2010, and September 17, 2010; (ii) Verifications of Employment completed by ██████████ ██████████, showing that Respondent was employed beginning January 3, 2011, receiving his first paycheck on January 14, 2011, and continued to be employed through December 2011; (iii) a FAP application Respondent submitted on January 14, 2011, in which he reported no employment income; and (iv) a FAP application Respondent submitted to the Department as a redetermination on December 14, 2011, in which he reported no employment income; (v) a benefit summary inquiry showing that Respondent was issued FAP benefits during the months at issue; and (vi) FAP OI budgets showing that income from ██████████ was not included in the calculation of Respondent's FAP benefits for the months at issue. Exhibit 1, pp. 76-77, 69-75, 40, 59, 66-68.

This evidence shows that Respondent completed an application and a redetermination while employed and failed to disclose this employment and that he received FAP benefits which did not take into consideration his receipt of employment income. The absence of any reported employment establishes, by clear and convincing evidence, that Respondent intentionally withheld information for the purpose of maintaining or preventing reduction of FAP benefits. Thus, the Department established that Respondent committed an IPV concerning his FAP case.

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 (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 established that Respondent committed an FAP IPV. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from the FAP program.

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 client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2013), pp. 1, 6; BAM 705 (July 2013), p. 6.

The Department alleges that Respondent was overissued FAP benefits between July 1, 2010, and September 30, 2010, and between January 1, 2011, and December 31, 2011.

(i) FAP OI for July 1, 2010, to September 30, 2010

Based on Respondent's receipt of his first pay check from ██████████ on May 7, 2010, the Department properly determined that the first OI period began July 1, 2010. See BAM 720, p. 7; Exhibit 1, pp. 77, 69. The issuance summary shows that Respondent was issued \$600 in FAP benefits between July 2010 and September 2010. Exhibit 1, p. 66. A review of the FAP OI budgets for July 2010 through September 2010 show that, when Respondent's unreported income from ██████████ is included in the calculation of his FAP benefits, he was eligible to receive only \$143 during those months. Thus, the Department is entitled to recoup or collect from Respondent \$457, the difference between the \$600 in FAP benefits actually issued to Respondent and the \$143 in FAP benefits he was eligible to receive between July 2010 and September 2010.

(ii) FAP OI for January 1, 2011, to December 31, 2011

Based on Respondent's receipt of his first ██████████ paycheck on January 14, 2011, the second OI period began March 2011. See BAM 720, p. 7. Therefore, the Department is not eligible to recoup benefits issued in January 2011 and February 2011.

The issuance summary shows that between March 1, 2011, and December 31, 2011, Respondent was issued \$2,000 in FAP benefits. Exhibit 1, pp. 67-68. A review of the FAP OI budgets for March 2011 through December 2011 show that, when Respondent's unreported income from ██████████ is included in the calculation of his FAP benefits, he was eligible to receive only \$48 during those months. Thus, the

Department is entitled to recoup or collect from Respondent \$1,952, the difference between the \$2,000 in FAP benefits actually issued to Respondent and the \$48 in FAP benefits he was eligible to receive between March 2011 and December 2011.

Based on the above, the total FAP OI to Respondent that the Department is entitled to recoup and/or collect from Respondent is \$2,409, the sum of the \$457 FAP OI for the period July 2010 through September 2010 and the \$1,952 FAP OI for the period March 2011 through December 2011.

DECISION AND ORDER

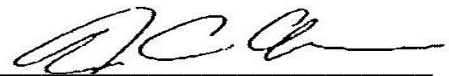
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

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 \$2,409 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to reduce the OI to \$2,409 for the periods July 2010 through September 2010 and March 2011 through December 2011, and initiate recoupment and/or collection procedures 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.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 10, 2014

Date Mailed: January 13, 2014

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.

ACE/pf

2013-69191/ACE

CC:

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[REDACTED]
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