

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: [REDACTED]  
Issue No.: 3055  
Case No.: [REDACTED]  
Hearing Date: February 19, 2013  
County DHS: Genesee (06)

**ADMINISTRATIVE LAW JUDGE:** Gary F. Heisler

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on February 19, 2013. Respondent did not appear. The record did contain returned mail. In accordance with Bridges Administration Manual (BAM) 720, the hearing proceeded without Respondent.

**ISSUE**

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between January 1, 2012, and August 31, 2012, which the Department is entitled to recoup?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. Respondent intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination by failing to report his change of physical residence to another state.
2. Respondent was clearly and correctly instructed regarding reporting responsibilities as evidenced by his signature of the Assistance Application (DHS-1171).
3. Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

4. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report his change of physical residence to Delaware and continuing to receive and use Food Assistance Program (FAP) benefits through Michigan when he was no longer a resident of Michigan and no longer eligible for benefits through Michigan.
5. January 1, 2012, to August 31, 2012, has correctly been determined as the over-issuance period in this case.
6. As a result of the Intentional Program Violation (IPV) Respondent received a [REDACTED] over-issuance of benefits during the over-issuance period.
7. On November 9, 2012, the Office of Inspector General submitted the agency request for hearing of this case.

### **CONCLUSIONS OF LAW**

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 1997 AACRS R 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (IPV) and the Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

#### **BAM 720 INTENTIONAL PROGRAM VIOLATIONS**

##### **DEPARTMENT POLICY**

###### **All Programs**

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

BAM 700 explains OI discovery, OI types and standards of promptness. BAM 705 explains agency error and BAM 715 explains client error.

##### **DEFINITIONS**

###### **All Programs**

**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 or CDC provider has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

### **FAP Only**

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

### **IPV**

### **FIP, SDA and FAP**

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

### **FAP Only**

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

### **MA and CDC Only**

IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**
- Signs a DHS-4350 **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**
- Is found responsible for the IPV by an Administrative Law Judge conducting an IPV or debt establishment hearing.

## **OVER-ISSUANCE PROCESSING**

### **Recoupment Specialist Referral**

#### **FIP, SDA, CDC and FAP Only**

Bridges refers most client errors, CDC provider errors and suspected IPV to the RS. Use the DHS-4701, Over-issuance Referral, to refer manual OIs.

#### **MA and AMP Only**

Do not refer these OIs to the RS. See BAM 710 for suspected IPV processing.

#### **SER and ESS Only**

Refer these OIs to the RS only when IPV is suspected and a FIP, SDA or FAP OI also exists for the same period. Follow procedures in the SER manual for recoupment of SER. Follow procedures in [BEM 232](#) for Direct Support Services (DSS) OIs.

## **OVER-ISSUANCE PERIOD**

### **OI Begin Date**

#### **FIP, SDA, CDC and FAP**

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.

To determine the first month of the OI period (for OIs 11/97 or later) Bridges allows time for:

- The client reporting period, per BAM 105.
- The full standard of promptness (SOP) for change processing, per BAM 220.
- The full negative action suspense period.

**Note:** For FAP simplified reporting, the household has until 10 days of the month following the change to report timely. See BAM 200.

### **OI End Date**

#### **FIP, SDA, CDC and FAP**

The OI period ends the month (or pay period for CDC) before the benefit is corrected.

### **OVER-ISSUANCE AMOUNT**

#### **FIP, SDA, CDC and FAP**

The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. (Use BAM 715 inserted below)

### **OVERISSUANCE CALCULATION**

#### **FIP, SDA, CDC and FAP**

#### **Benefits Received FIP, SDA and CDC Only**

The amount of benefits received in an OI calculation includes:

- Regular warrants.
- Supplemental warrants.
- Duplicate warrants.
- Vendor payments.
- Administrative recoupment deduction.
- EBT cash issuances.
- EFT payment.
- Replacement warrants (use for the month of the original warrant).

Do **not** include:

- Warrants that have not been cashed.
- Escheated EBT cash benefits (SDA only).

Warrant history is obtained from Bridges under Benefit Issuance; see RFT 293 and 294.

### **FAP Only**

The amount of EBT benefits received in the OI calculation is the **gross** (before AR deductions) amount **issued** for the benefit month. FAP participation is obtained in Bridges under Benefit Issuance.

### **Determining Budgetable Income**

#### **FIP, SDA, CDC and FAP**

If improper reporting or budgeting of income caused the OI, use actual income for the OI month for that income source. Bridges converts all income to a monthly amount.

**Exception:** For FAP only, do not convert the averaged monthly income reported on a wage match.

Any income properly budgeted in the issuance budget remains the same in that month's corrected budget.

### **FAP Only**

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. Use the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity.

For client error OIs due, at least in part, to failure to report earnings, do **not** allow the 20 percent earned income deduction on the unreported earnings.

### **OIG RESPONSIBILITIES**

#### **All Programs**

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.

- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearing System (MAHS).
- Return non-IPV cases to the RS.

### **IPV Hearings**

#### **FIP, SDA, CDC, MA and FAP**

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

**Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
  2. 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 combined 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.

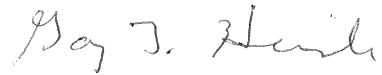
Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record.

**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, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.



Gary F. Heisler  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: February 26, 2013

Date Mailed: February 27, 2013

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant,
  - the failure of the ALJ to address other relevant issues in the hearing decision.

20139555/GFH

Request must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

GFH/kl

cc:

