

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 23, 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 accurately report his FAP group members.
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 March 1, 2010, through May 31, 2011.
7. The Department alleges that, during the fraud period, Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$2,505.
8. This was Respondent's first second third alleged FAP 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.

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 concerning his FAP case because he fraudulently reported that his daughter lived in the household with him and he received FAP benefits on her behalf. In support of its case, the Department presented FAP applications dated March 9, 2010, and March 9, 2011, in which Respondent reported that his daughter lived with him and sought FAP benefits on her behalf. Exhibit 1, pp. 15, 31. The Department presented a FAP benefit summary inquiry showing that between May 1, 2010, and May 31, 2011, Respondent received \$367 in monthly FAP benefits, the maximum available for a group size of two. A letter from [REDACTED] dated May 3, 2011, established that the child had attended school [REDACTED] since April 16, 2007, while living there with her mother. Exhibit 1, p. 50. The Department also presented a letter completed by the [REDACTED] [REDACTED] showing that the child was actively receiving food benefits on her mother's case from [REDACTED] in May 2011.

The foregoing evidence, in the absence of any evidence to the contrary, was sufficient to establish by clear and convincing evidence that Respondent's daughter was not living with Respondent between March 1, 2010, and May 1, 2011, and that Respondent intentionally misrepresented information concerning his household members 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 the Department established that 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 \$2,505 in FAP benefits between March 1, 2010, and May 1, 2011. The Department did not present any FAP OI budgets for the months at issue. However, as discussed above, Respondent received FAP benefits for a group size of two when he should have received FAP benefits for a group size of one. The benefits issuance summary presented by the Department showed that Respondent received monthly FAP benefits of \$367, the maximum FAP benefits for a group size of two, for May 1, 2010 to May 31, 2011, when he was eligible for only \$200, the maximum FAP benefits for a group size of one. See RFT 260 (October 2009 and October 2010), p. 1. Because Respondent was overissued \$167 monthly during those 13 months, the Department has established an OI of \$2,171. In the absence of FAP OI budgets for March 2010, when Respondent was issued \$272 in FAP benefits, and for April 2010, when Respondent was issued \$333 in FAP benefits, the Department has failed to establish an OI for those months.

Thus, the Department is entitled to recoup or collect from Respondent \$2,171 in overissued FAP benefits for May 1, 2011, to May 31, 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 \$2171 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to reduce the OI to \$2,171 for the period May 1, 2010 to May 31, 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

2014-250/ACE

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

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]