

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.: 201367002
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: February 13, 2014
County: Jackson

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich. Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on February 13, 2014 from Lansing, Michigan. Respondent did not appear. The record did not contain returned mail. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5) and Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits from July 1, 2011, to November 30, 2011, 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. The Department's OIG filed a hearing request on September 5, 2013, to establish an over-issuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving Food Assistance Program (FAP) benefits.

3. Respondent was a recipient of Food Assistance Program (FAP) benefits issued by the Department during the over-issuance period.
4. Respondent was aware of the responsibility to report changes affecting eligibility within 10 days.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. July 1, 2011, to November 30, 2011, has correctly been determined as the over-issuance period in this case.
7. During the over-issuance period, Respondent was issued [REDACTED] in Food Assistance Program (FAP) benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits during the properly calculated over-issuance period.
9. This is Respondent's 1st Intentional Program Violation (IPV).
10. The notice mailed to Respondent's last known address was not returned by the US Post Office as undeliverable.

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.

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.

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.

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 [REDACTED] or more, **or**;
 - The total OI amount is less than [REDACTED], **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.

**DISQUALIFICATION
FIP, SDA, CDC AND FAP ONLY**

Disqualify an active **or** inactive recipient who:

Is found by a court or hearing decision to have committed IPV, **or**;

Has signed a DHS-826 or DHS-830, **or**;

Is convicted of concurrent receipt of assistance by a court, **or**;

For FAP, is found by SOAHR or a court to have trafficked FAP 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.

See BEM 400, BEM 518, and BEM 554 for treatment of the assets and income of disqualified group members.

CDC Providers Only

See BEM 707 for provider disqualifications.

**Standard Disqualification Periods
FIP, SDA, CDC and FAP**

The standard disqualification period is used in all instances except when a **court** orders a different period (see Non-Standard Disqualification Periods in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV.

FIP and FAP Only

Ten year disqualification for concurrent receipt of benefits (see BEM 203).

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

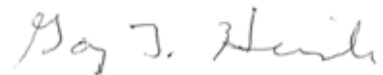
DECISION AND ORDER

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:

1. The Department has established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. Respondent did receive a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from Food Assistance Program (FAP) benefits in accordance with Department of Human Services Bridges Administration Manual (BAM) 720 (2013).



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

Date Signed: 02/24/2014

Date Mailed: 02/25/2014

201367002/GFH

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.

GFH/sw

cc:

