**IN THE MATTER OF:**

█████████████

Reg. No.:      20143489
Issue No(s).:  3005
Case No.:      █████████
Hearing Date:  January 28, 2014
County:        Saginaw

**ADMINISTRATIVE LAW JUDGE:**  Carmen G. Fahie

## HEARING DECISION FOR CONCURRENT BENEFITS
## INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulations, particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on Tuesday, January 28, 2014 from Lansing, Michigan.  The Department was represented by ██████████, OIG Agent ████ 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 400.3178(5).

## ISSUES

1.  Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

2.  Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?

3.  Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

## 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 October 2, 2013 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 requested that Respondent be disqualified from receiving program benefits.

3.  Respondent was a recipient of FAP benefits issued by the Department.

4.  On the Assistance Application signed by Respondent on January 31, 2011, Respondent reported that he intended to stay in Michigan.

5.  Respondent was aware of the responsibility to report changes in 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 OIG indicates that the time period they are considering the fraud period is September 1, 2011 through November 30, 2011.

8.  During the alleged fraud period, Respondent was issued ███████ in FAP benefits from the State of Michigan.

9.  During the alleged fraud period, Respondent was also issued FAP benefits from the State of Texas.

10. This was Respondent's first alleged IPV.

11. A notice of hearing was mailed to Respondent at the last known address and 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, p. 10.

## 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, p. 6; 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.

**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, 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.

**Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI.  BAM 700 (July 2013), p. 1.

In this case, the Respondent failed to report changing his residence from the State of Michigan to the State of Texas. Department Exhibit 33-34. In addition, the Respondent received concurrent benefits from the State of Michigan and the State of Texas during the contested time period.  Department Exhibit 35-41. As a result, the Respondent received a total overissuance of ▇▇▇▇▇ of FAP benefits that the Department is required to recoup.

Even though the Respondent spent his FAP benefits from the State of Michigan in the State of Michigan, the benefits were received during the contested time period when he was also receiving FAP benefits in the State of Texas.  The Respondent received FAP benefits for the same time period from the State of Michigan and the State of Texas.

## 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.  The Department has established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).

2.  Respondent did receive an OI of program benefits in the amount of ▇▇▇▇▇ from the FAP program.

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

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

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IT IS SO ORDERED.

_Carmen G. Fahie_
**Carmen G. Fahie**
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed:  February 6, 2014

Date Mailed:  February 7, 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.

CGF/aca

cc: