

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**



Reg. No.: 2014-12483  
Issue No(s): 3005  
Case No.: [REDACTED]  
Hearing Date: March 12, 2014  
County: Genesee (02)

**ADMINISTRATIVE LAW JUDGE:** Eric Feldman

**HEARING DECISION FOR 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 Regulation (CFR), 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 March 12, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation 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 overissuance (OI) of  
 Family Independence Program (FIP)     State Disability Assistance (SDA)  
 Food Assistance Program (FAP)     Child Development and Care (CDC)  
 Medical Assistance (MA)  
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  
 Family Independence Program (FIP)?     State Disability Assistance (SDA)?  
 Food Assistance Program (FAP)?     Child Development and Care (CDC)?

**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 November 18, 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 persons in the home (member add/delete).
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 December 1, 2009 to April 1, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$17,812 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$13,836 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$3,976.
9. This was Respondent's  first  second  third alleged IPV.
10. 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 of her FAP benefits because she failed to report that her child was no longer in the home, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2009), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home. BAM 105, p. 7.

When a member leaves a group to apply on his own or to join another group, do a member delete in the month you learn of the application/member add. BEM 212 (October 2008), p. 7. If the member delete decreases benefits, adequate notice is allowed. BEM 212, p. 7.

The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2009 to April 1, 2012. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her son leaving the home and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, the Department presented Respondent's application dated July 23, 2009, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1. A review of the application indicated that she reported her son as a member of the FAP group. See Exhibit 1. A total group size of four was reported. See Exhibit 1.

Second, the Department presented multiple applications and a redetermination during the alleged fraud period to indicate that the Respondent continued to report her son in the home even though the Department alleges that her son was not. The application/redetermination dates were as follows: May 3, 2011; April 23, 2010; April 5, 2012; and February 13, 2012. See Exhibit 1. Each application listed the son as part of the household and the total group size was four. See Exhibit 1.

Third, the Department presented e-mail correspondence from both the Department and Children's Protective Services (CPS), which indicate how the alleged IPV was initiated. See Exhibit 1. The Department e-mails summarize that it discovered that the Respondent listed her son in the home even though the Department alleges he was not there. See Exhibit 1. Also, the Department e-mail states that the son also attended

public school and that it called the son's school and discovered the son withdrew from the school on November 13, 2009 and the school records were sent to another school in [REDACTED]. See Exhibit 1. In summary, the Department infers that during the alleged fraud period, the FAP group size should have been three (Respondent and two children) rather than four (Respondent and three children).

Fourth, the Department presented the public school records showing that the son was located in [REDACTED] during the alleged fraud period. See Exhibit 1. A review of the letter indicated that it was Georgia public school record response to an OIG request dated October 22, 2013. See Exhibit 1. A review of the record indicated that Respondent's child was pre-enrolled in the school from September 2009 to May 2010. See Exhibit 1. Moreover, the last location of the child stated other state. See Exhibit 1. Additionally, the school record indicated from July 2010 to January 2011, the son withdrew for another district. See Exhibit 1.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The evidence is sufficient to establish that Respondent failed to report that her son left the home and that she intentionally withheld or misrepresented the household group size information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

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). The Department presented evidence to establish Respondent's intent during the alleged IPV usage.

First, the Department presented the public school records showing that the son was located in [REDACTED] during the alleged fraud period. See Exhibit 1. This evidence established that the son had moved out-of-state and was no longer residing in the home during the alleged fraud period.

Second, the Department presented multiple applications and a redetermination during the fraud period to indicate that the Respondent continued to report her son in the home even though he was located out-of-state. This evidence showed that the Respondent, during the alleged fraud period, represented her son was in Michigan even though he was out-of-state. This is persuasive evidence to show that the Respondent intentionally withheld information concerning that her son left the home during the alleged fraud period.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report her son left the home and that she intentionally withheld or misrepresented the household group size for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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. 16. 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 has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

### **Overissuance**

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits.

Under Department policy, 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. BAM 720, p. 7. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 720, p. 7. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7.

Applying the above standard, it is found that the Department applied the appropriate OI begin date of December 1, 2009. BAM 720, p. 7. The evidence presented that the Department discovered the son's school records were requested to be transferred on November 13, 2009. See Exhibit 1. Moreover, the school records indicated pre-enrollment from out-of-state on September 3, 2009. See Exhibit 1. As such, the Department applied an appropriate OI begin date.

Additionally, 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 group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In this case, the Department presented benefit summary inquiries from December 2009 to April 2012. See Exhibit 1. The Department, though, did not present specific OI

budgets. Nevertheless, the Department presented a Food Assistance Issuance Table to demonstrate there is a \$142 difference between a household size of four to three. See Exhibit 1. In essence, the Department presented the benefit summary inquires to show what the Respondent received each month, then it subtracted \$142 from each month to establish the OI amount for a group size of three.

As stated above, the Department established that the group composition should have been three rather than four during the fraud period. A review of the OI benefit summary inquiries and FAP issuance policy found them to be fair and correct. The Department established that from December 2009 to April 2012, the Respondent was issued \$17,812 in FAP benefits. After subtracting the \$142 difference for each benefit month to reflect a FAP group composition of three, the corrected total amount of FAP benefits issuance was \$13,836. The overissuance was established to be \$3,976 in FAP benefits. See Exhibit 1. Thus, the Department is entitled to recoup \$3,976 of FAP benefits.


### **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, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent  did  did not commit an intentional program violation (IPV).
2. Respondent  did  did not receive an OI of program benefits in the amount of \$3,976 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

- initiate collection procedures for a \$3,976 OI 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.

  
**Eric Feldman**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: March 25, 2014

2014-12483/EJF

Date Mailed: March 25, 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.

EJF/tlf

cc:

