

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

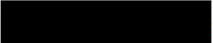
**IN THE MATTER OF:**



Reg. No.: 2014 30988  
Issue No(s): 3005  
Case No.:   
Hearing Date: June 5, 2014  
County: Kalamazoo DHS (39)

**ADMINISTRATIVE LAW JUDGE:** Lynn M. Ferris

**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 June 5, 2014 from Detroit, Michigan. The Department was represented by , Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

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 January 21, 2014, 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 her husband's return to employment after absence due to injury.
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 June 1, 2010 to January 31, 2011 (8 months) (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
8. During the fraud period, Respondent was issued \$5,096 in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] 7 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$ [REDACTED].
10. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of [REDACTED].
11. This was Respondent's  first  second  third alleged IPV.
12. 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 (7/1/13), 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 (7/1/13), p. 6; 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 evidence presented demonstrates that the Claimant applied for Food Assistance on in March of 2009 and reported all income including SSI received at that time. Thereafter, the Claimant completed a redetermination on March 4, 2010 and at the time because she was not working accurately reported her income. On April 2, 2010, the Claimant began employment. The Claimant testified credibly that she did report to the Department that her employment had begun and that she had numerous workers assigned to her at that time. The Department's evidence indicated that it had no record of the Claimant reporting her employment. The Claimant could not pin down the date she called her worker as the event occurred over 4 years ago. Based upon the evidence presented, it is determined that the evidence does not demonstrate that the Claimant committed or intended to commit fraud by not reporting her employment. In fact, while the Department may have demonstrated that the Respondent did not report as required by the preponderance of the evidence, the standard necessary to prove intent to commit fraud so that more FAP benefits can be received than the Claimant was otherwise entitled to was not shown. Therefore, an IPV has not been established.

### **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 (7/1/13), 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 did not establish by clear and convincing evidence that an IPV occurred and thus has not established that its request for disqualification should be granted.

**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.

In this case, the Department presented Food Assistance Budgets for each month of the overissuance period, an overissuance summary and earnings records to support the earnings used by the Department to recalculate the FAP benefits and determine the overissuance amounts for each month. The FAP budgets and calculations were very clearly presented and verified, and therefore demonstrated that when the Claimant's unreported income was considered, the Claimant was not entitled to the full amount of Food Assistance Benefits received by the group. Because the employment and income from the Claimant was not reported, the Department calculated the benefits for FAP which did not include the Claimant's earnings, thus causing an overissuance of FAP benefits. Based upon a review of the earnings received that were not included by the Department when calculating FAP benefits initially, and a review of the FAP budgets presented, it is determined that the Claimant's FAP group was not entitled to receive all of FAP benefits they received, as the group's income for the period in question was more than used to calculate benefits. Exhibit 1 pp. 33 -75. Therefore, the Department did establish the overissuance and is entitled to begin recoupment of same in the amount of [REDACTED]

In this case, the Department presented FIP Budgets for each month of the overissuance period, an overissuance summary and earnings records to support the earnings used by the Department to recalculate the FIP benefits and determine the overissuance amounts for each month. The FIP budgets and calculations were very clearly presented and verified and therefore demonstrated that when the Claimant's unreported income was considered, the Claimant was not entitled to the full amount of FIP Benefits received by the group. Because the employment and income from the Claimant was not reported, the Department calculated the benefits for FIP which did not include the Claimant's earnings, thus causing an overissuance of FIP benefits. Based upon a review of the earnings received that were not included by the Department when calculating FIP benefits initially, and a review of the FIP budgets presented, it is determined that the Claimant was not entitled to receive all of the FIP benefits issued as the group's income for the period in question was more than used to calculate benefits. Exhibit 1 pp. 33 -75. Therefore, the Department did establish the overissuance and is entitled to begin recoupment of same in the amount of [REDACTED]

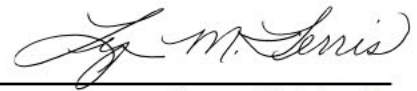
**DECISION AND ORDER**

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. 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 [REDACTED]6 from the following program(s)  FIP  FAP  SDA  CDC  MA.
3. Respondent  did  did not receive an OI of program benefits in the amount of [REDACTED] from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.



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**Lynn M. Ferris**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: June 18, 2014

Date Mailed: June 18, 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.

LMF/tm

cc:

[REDACTED]