

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

**IN THE MATTER OF:**



Reg. No.: 201427109  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: May 29, 2014  
County: Calhoun County DHS

**ADMINISTRATIVE LAW JUDGE:** Gary F. Heisler

**HEARING DECISION**

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 May 29, 2014, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. 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 in Respondent's absence.

**ISSUE**

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits from May 1, 2012 to December 31, 2012 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. On January 30, 2012, Respondent signed the affidavit in the Assistance Application (DHS-1171) certifying that he was aware of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
2. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

3. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report that he began receiving earned income on February 22, 2012.
4. In accordance with Bridges Administration Manual (BAM) 720 May 1, 2012 to December 31, 2012 has correctly been determined as the over-issuance period associated with this Intentional Program Violation (IPV).
5. During the over-issuance period, May 1, 2012 to December 31, 2012, Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.
6. This is Respondent's 1<sup>st</sup> Food Assistance Program Intentional Program Violation (IPV).
7. The Department's OIG filed a disqualification hearing request on February 19, 2014.

### **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 AACS 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 type. This item explains Intentional Program Violation (IPV) processing and establishment.

BAM 700 explains the discovery date, types and standards of promptness. BAM 705 explains agency error and BAM 715 explains client error.

##### **DEFINITIONS**

###### **All Programs**

**Suspected IPV** means an over-issuance 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, FAP and CDC**

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client/AR signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

#### **FAP Only**

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

#### **MA Only**

IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**
- Signs a DHS-4350, IPV Repayment Agreement **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**
- Is found responsible for the IPV by an Administrative Law Judge conducting an IPV or debt establishment hearing.

#### **OVER-ISSUANCE PERIOD**

##### **Begin Date**

##### **FIP, SDA, CDC and FAP**

The over-issuance 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 it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 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.

**End Date**

**FIP, SDA, CDC and FAP**

The OI period ends the month (or pay period for CDC) before the benefit is corrected.

**OVERISSUANCE AMOUNT**

**FIP, SDA, CDC and FAP**

The amount of the overissuance is the benefit amount the group or provider actually received minus the amount the group was eligible to receive.

**OVERISSUANCE CALCULATION**

**FIP, SDA, CDC and FAP**

**Benefits Received**

**FIP, SDA and CDC**

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 calculation is the **gross** (before AR deductions) amount **issued** for the benefit month. FAP participation is obtained in Bridges under Benefit Issuance.

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the overissuance month. Use the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity.

**Determining Budgetable Income**

**FIP, SDA, CDC and FAP**

If improper reporting or budgeting of income caused the over-issuance, use actual income for the over-issuance 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**

For client error over-issuance 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 12 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 and MDE 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 over-issuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1000 or more, **or**
  - The total 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.

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 AND FAP**

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

Is found by a court or hearing decision to have committed IPV.

Has signed a DHS-826 or DHS-830.

Is convicted of concurrent receipt of assistance by a court.

For FAP, is found by MAHS 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 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 if fraudulent statements were made regarding identity or residency; see BEM 203.

### **CDC Providers Only**

See BEM 707 for disqualification periods.

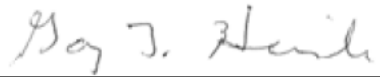
A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record.

**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 the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program benefits that the Department is entitled to recoup.

This is Respondent's 1<sup>st</sup> Intentional Program Violation (IPV) of the Food Assistance Program and the Department may disqualify Respondent from receiving Food Assistance Program benefits in accordance with Department of Human Services Bridges Administration Manual (BAM) 720 (2013).

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.



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

Date Signed: June 16, 2014

Date Mailed: June 16, 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.

GFH/hj

cc:

