

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-27803  
Issue No(s): 3005  
Case No.: [REDACTED]  
Hearing Date: December 2, 2014  
County: St. Joseph

**ADMINISTRATIVE LAW JUDGE:** Darryl T. Johnson

**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, an in-person hearing was held on December 2, 2014, in Centreville, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Also participating in the hearing were [REDACTED] Adult Services Specialist, [REDACTED], Eligibility Specialist, and [REDACTED], Case Manager for Community Mental Health.

Respondent appeared at the hearing with her attorney, [REDACTED] of Legal Aid of Western Michigan.

**ISSUES**

1. Did Respondent receive an overissuance (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)?

**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 December 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 requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to use FAP benefits only for purposes authorized by the Food Stamp Act of 1977.
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 January 1, 2013, through November 30, 2013, (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in 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 an OI in FAP benefits in the amount of [REDACTED].
9. This was Respondent's first alleged IPV.
10. 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 (7/1/13), 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 (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, Respondent's card was used to make two purchases at the [REDACTED] store in [REDACTED] Michigan. That store has been disqualified by the United States Department of Agriculture for trafficking in FAP. The store is a party store that was stocked with foods, but mostly items that were not eligible for purchase with FAP benefits. The store has limited counter space and no optical scanners, making it highly unlikely that customers would be able to make large purchases. The store was not selling meat at the time of the transactions in question. It had very limited dairy, no fresh produce, and only food items typical of a party store.

The Department is alleging Respondent made fraudulent purchases of [REDACTED] on [REDACTED], and [REDACTED] on [REDACTED]. Because of their large amounts, such purchases are indicative of trafficking, where a client would sell a portion of their FAP in exchange for cash, often receiving just [REDACTED] for every [REDACTED] in FAP sold. The average Bridge transaction in this store was [REDACTED] between November 2011 and March 2013. Clearly, Respondent's two transactions were suspiciously high.

Respondent testified that she did not provide her Bridge card to anyone else and did not disclose her PIN to anyone, but she did tell someone that she used her birth year as her PIN so it is possible that someone could have figured it out. The Department provided an affidavit (Exhibit 2) signed by [REDACTED], stating Respondent "did give me her card to get cash & ciggs (sic) at [REDACTED]. She rode along and even went inside to pick out her own ciggs." Respondent testified that she did not use her card at that store, and she never used it to buy cigarettes, cigars, or alcohol, and she never traded her FAP benefits for cash.

These cases often hinge upon credibility. Based upon her testimony, language, body language, and demeanor, Respondent has cognitive challenges not faced by most people. The undersigned is persuaded that the two suspect transactions were not lawful transactions. However, when considered in the context of the burden of proof, the evidence is not sufficient to create a clear and firm belief that the Respondent was responsible for – or even knowingly participated in – the two transactions. These were two isolated transactions. Respondent has other income which she testified she uses for her "needs." At the time, she was living in a home with at least two other people and it was a tumultuous setting. Her transactions cover 23 pages (Exhibit 1 Pages 16-39). Very few of her transactions exceeded [REDACTED], and most of them are under [REDACTED]. The evidence is simply not sufficient to find that Respondent intentionally violated program rules. The limited number of instances which occurred, the living situation where Respondent found herself, and her spending history all raise doubts about whether she was a participant in the two transactions. Those doubts are substantial enough to find that the Department has not met its burden of proof.

### **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 (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, this is Respondent's first alleged IPV. Because the evidence does not support a finding that an IPV occurred, disqualification will not be ordered.

**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 evidence does not support a finding that there was an OI. No recoupment will be ordered.

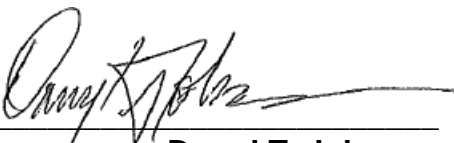
**DECISION AND ORDER**

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 not established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. Respondent did not receive an OI of program benefits from the FAP program.

The Department is ORDERED to cease all recoupment procedures.

It is FURTHER ORDERED that Respondent is not subject to disqualification.



**Darryl T. Johnson**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 12/04/14

Date Mailed: 12/04/14

DJ/jaf

**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.

cc:

