

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

**IN THE MATTER OF:**



Reg. No.: 14-004415  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: July 28, 2014  
County: CALHOUN (DISTRICT 21)

**ADMINISTRATIVE LAW JUDGE: Lynn 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 July 28, 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 Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for 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 June 17, 2014, 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 benefit, MA Benefits and SER benefits issued by the Department.
4. Respondent was aware of the responsibility to report the proper group members living with her for receiving Food Assistance.
5. Respondent did not have an 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 May 1, 2009 through January 13, 2012 (fraud period). FAP only.
7. During the fraud period, Respondent was issued \$ [REDACTED] by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in [REDACTED] 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

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 (4/1/09), p. 10; (12/1/11) 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 (1/1/09), p. 5; (12/1/11), 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 Department alleges that the Respondent received FAP benefits, Medical Assistance benefits and SER benefits for her children that she was not entitled to receive as they were not living with her. The only proofs presented to establish an overissuance by budgets and supporting information involved the FAP benefits. There was no other evidence provided to establish how the Medical Assistance overissuance amount or the SER overissuance were determined. Therefore, the Department did not meet its burden to establish an overissuance as regards MA and SER. Only the alleged FAP IPV will be addressed.

As part of its proofs, the Department presented notes of the Department caseworker's telephone conversation with the alleged grandmother of the two children that the Respondent was alleged to have improperly reported as living with her. At no time did the Department provide any further information, other than notes of this one conversation. The Department OIG was unable to contact the grandmother, or the father of the child, or to substantiate its allegation that Child Protective Services told the caseworker that the Respondent's children were not living with the Respondent since 2009. The Department did not present the caseworker as a witness or the CPS worker, or records indicating the information that was provided. Thus, the evidence presented is hearsay and can be given little if any weight. The Department also presented a docket sheet from a divorce proceeding between the Respondent and her then husband. While the docket sheet indicates a support order was issued, it does not indicate any of the final details of such order or who was required to pay support. Exhibit 1, pp. 32-33. The Department presented no evidence to support its allegation that the Respondent was required to pay child support through Friend of the Court records or the support order. The Respondent's application indicated that various children were living with her and the schools they were attending, however none of the school records for the children allegedly not living with her were presented. The Department also alleged that the child's grandparent was a guardian or power of attorney, and again no such records establishing this fact and connecting it to the FAP group was presented. The ex-husband of the Respondent was not interviewed by the Department. In essence, the Department's entire case rests on hearsay and thus does not meet the requisite standard required to prove an IPV, which requires clear and convincing evidence be presented.

**Disqualification**

A Respondent is to be disqualified when a court or hearing decision finds a client committed IPV and 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 (1/1/09); (10/1/09), 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. 13; 12-13.

In this case, the Department did not establish that an IPV was committed and therefore is not entitled to any disqualification period.

**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.

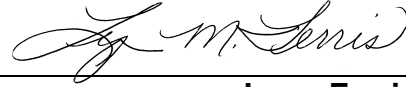
In this case, the Department did not establish an IPV and therefore is not entitled to a finding that an overissuance occurred.

**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 IPV.
2. Respondent did not receive an OI of program benefits in the amount of [REDACTED] from the following program(s) FAP, MA and SER.

3. The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: **12/2/2014**

Date Mailed: **12/2/2014**

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**NOTICE:** The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

