

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

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

Reg. No.: 14-005811  
Issue No.: 3005  
Case No.: ██████████  
Hearing Date: October 23, 2014  
County: Genesee (06-Clio Rd)

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**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 October 23, 2014, from Detroit, Michigan. The Department was represented by ██████████  
████████████████████ 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 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 July 9, 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 benefits issued by the Department.
4. Respondent was aware of the responsibility to report income.
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 alleges that from December 1, 2012, to May 31, 2013, Respondent was issued \$4,758 in FAP benefits by the State of Michigan and was entitled to \$918 in such benefits during this time period.
7. The Department alleges that Respondent received a FAP OI in the amount of \$3,840.
8. This was Respondent's first alleged FAP IPV.
9. 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 Department's OIG requested IPV hearings prior to October 1, 2014, 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 (May 2014), pp. 12-13.

### **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 (May 2014), 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 concerning his FAP benefits because he failed to report his children's Retirement Survivors and

Disability Income (RSDI) benefits. In support of its case, the Department presented (i) the online application Respondent submitted on October 9 2012; (ii) the Single Online Query (SOLQ) report, which contains information provided by the Social Security Administration (SSA) to the Department concerning Social Security benefits, for each of Respondent's four children; (iii) the Child Development and Care (CDC) Application Respondent submitted to the Department on December 3, 2012; (iv) the State Emergency Relief (SER) application Respondent signed May 1, 2013; and (v) a benefit summary inquiry showing the monthly FAP benefits issued to Respondent between December 2012 and May 2013.

The evidence presented shows that Respondent's four children were each eligible for RSDI effective September 2012, which payment would commence October 2012, and that Respondent failed to disclose this income in his October 9, 2012, FAP application; his November 30, 2012, CDC application; or his May 1, 2013, SER application. The CDC and SER applications specifically asked Respondent whether anyone in the household received any unearned income and identified Social Security benefits as a type of unearned income, and Respondent checked "no" each time. The evidence presented is sufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information concerning his children's RSDI income for the purpose of obtaining or maintaining FAP eligibility.

Thus, the Department has established that Respondent committed an IPV of his FAP benefits.

### **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 (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. 13.

In this case, the Department established that Respondent committed a FAP IPV. Because this was Respondent's first IPV, he is subject to a one-year disqualification from the FAP program.

### **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. The amount of the FAP OI is the benefit amount the client actually received minus the amount the client was

eligible to receive. BAM 720, p. 8; BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6. In this case, the Department alleges that Respondent received FAP benefits totaling \$4,758 for the period from December 1, 2012, to May 31, 2013, but he was eligible for only \$918 in FAP benefits during this period, resulting in an overissuance of \$3,840.

To establish the OI amount, the Department presented FAP OI budgets for each month between December 2012 and May 2013 showing the FAP benefits Respondent was eligible to receive if his children's RSDI income had been included in the calculation of his FAP eligibility for each month. The budgets also include self-employment income. The recoupment specialist participated in the hearing and testified that Respondent had timely reported \$650 in monthly self-employment income for each month at issue in the fraud period but this income had not been budgeted into his FAP eligibility.

A review of each of the budgets shows that the Department properly considered the \$492 in monthly RSDI income that each of Respondent's four children received in December 2012, or \$1,968 monthly, and \$500 in monthly RSDI income that each of the four children received for each month between January 2013 and May 2013, or \$2,000 monthly. BAM 720, p. 10. With respect to Respondent's self-employment income, the Department properly reduced the \$650 in gross monthly self-employment total proceeds by a 25% deduction for expenses, resulting in monthly self-employment income of \$487. BEM 502 (October 2012), p. 3. Because the income was timely reported, the budgets properly show a 20% earned income deduction. BAM 720, p. 10.

A review of the budgets shows that, when the children's RSDI income and Respondent's self-employment income are included in the calculation of Respondent's monthly FAP benefits, Respondent was eligible for \$258 in FAP benefits in December 2012 and \$132 in FAP benefits for each month between January 2013 and May 2013. RFT 255 (December 2012), pp. 16, 21. Therefore, Respondent was eligible to receive a total of \$918 in FAP benefits for December 2012 to May 2013. The benefit summary inquiry shows that Respondent was issued \$4,758 in FAP benefits during this period. As such, he was overissued \$3,840 in FAP benefits, the difference between the \$4,758 in total FAP benefits issued to him between December 2012 and May 2013 and the \$918 he was eligible to receive those months.

Thus, the Department is entitled to recoup and/or collect from Respondent \$3,840 in FAP benefits issued to him from December 2012 and May 2013.

### **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 committed an IPV.

2. Respondent received an OI of FAP program benefits in the amount of \$3,840.

The Department is ORDERED to initiate recoupment procedures for the amount of \$3,840 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

  
**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **10/27/2014**

Date Mailed: **10/28/2014**

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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: 