

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

**IN THE MATTER OF:**

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

Reg. No.: 14-014603  
Issue No.: 3005  
Case No.: ██████████  
Hearing Date: March 25, 2015  
County: WAYNE-DISTRICT 57  
(CONNER)

**ADMINISTRATIVE LAW JUDGE: Eric Feldman**

**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 March 25, 2015, from Detroit, Michigan. The Department was represented by ██████████, 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 October 30, 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 criminal disqualifications to the Department.
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 April 1, 2014 to October 31, 2014 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP 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.
11. On November 12, 2014, Respondent signed a DHS-4350, IPV Repayment Agreement. See Exhibit 2, pp. 1-2.

### **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 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 \$500 or more, **or**
  - the total OI amount is less than \$500, **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 (October 2014), pp. 12-13.

As a preliminary matter, the Department originally indicated that it sought a lifetime disqualification for Respondent's alleged IPV. See Exhibit 1, pp. 1 and 4. However, the Department acknowledged during the hearing that this was only Respondent's first alleged IPV.

### **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 or CDC provider 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.

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), p. 1.

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, and
- The qualifying conviction occurred after August 22, 1996.

BEM 203, p. 2. If an individual is not in violation of the terms of probation or parole, Family Independence Program (FIP) benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative. BEM 203, p. 2.

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203, p. 2.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department of her prior drug-felony convictions, which occurred after August 22, 1996.

First, the Department presented evidence that Respondent had two or more felony drug convictions after August 22, 1996. See Exhibit 1, pp. 10-33 and 72-73. The Department testified and presented evidence that Respondent was convicted of her first drug-related felony on April 27, 2009. See Exhibit 1, p. 32. The Department presented additional evidence that showed Respondent pled guilty to two additional drug-related felonies on March 31, 2014 and June 9, 2014. See Exhibit 1, pp. 72-73.

Second, the Department presented Respondent's online application dated August 21, 2013. See Exhibit 1, pp. 34-71. Moreover, Respondent marked "no" to the question in the application, which asked if anyone has been convicted of a drug-related felony. See Exhibit 1, p. 40. However, the Department presented evidence that Respondent was

convicted of at least one drug-related felony at the time she submitted the application. See Exhibit 1, p. 32.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of her FAP benefits. In Respondent's application, she marked "no" to the question if whether she has ever been convicted of a drug-related felony; however, the Department presented evidence that Respondent was convicted of a drug-related felony. See Exhibit 1, pp. 32 and 40. Even though Respondent did not have her second drug-related felony at the time of the application, she still misrepresented her drug-related felony information when she withheld it in her application. Moreover, Respondent failed to be present at the hearing to rebut the Department's testimony and evidence. This shows by clear and convincing evidence that Respondent was aware of her responsibility to report her criminal justice disqualification and she intentionally withheld this information for the purpose of maintaining Michigan FAP eligibility. The Department has established that Respondent committed an IPV of FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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 (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. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

### **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 OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

During the hearing, it was discovered that Respondent signed an IPV Repayment Agreement (DHS-4350) on November 12, 2014. See Exhibit 2, pp. 1-2. By the Respondent signing the repayment agreement, the Department can initiate recoupment

