

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

IN THE MATTER OF:



Reg. No.: 201433712
Issue No.: 1005, 3005
Case No.: [REDACTED]
Hearing Date: June 5, 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 June 5, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and testified.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) which resulted in an over-issuance of Family Independence Program benefits and Food Assistance Program (FAP) benefits 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 June 25, 2008, Respondent submitted an application for Family Independence Program and Food Assistance Program benefits. It was mandatory for Respondent to participate in the MWA JET program.
2. Respondent's obtained employment with Progressive Residential /Alternative Choices in August 2008.
3. On April 20, 2009, JET worker Cheryl sent FIS K. Caro copies of a JET authorization for work at Progressive Residential to be used as Respondent's participation requirement beginning August 4, 2008 and a Progressive Residential /Alternative Choices work schedule for the period of July 20, 2008 to August 2,

2008 which were in Respondent's JET case file. Cheryl also reported that Respondent had positive follow ups for 180 days.

4. On April 2, 2014, the Office of Inspector General requested this Intentional Program Violation (IPV) hearing based on the allegation that Respondent had not reported his employment to DHS.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 AACRS 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 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 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.

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.

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.

**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

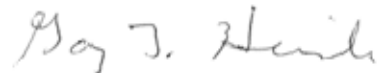
Ten year disqualification for concurrent receipt of benefits if fraudulent statements were made regarding identity or residency; see BEM 203.

The evidence in this record shows that Respondent reported his employment to the JET program. Respondent was also required to report the employment to DHS. BAM 720, cited above states: 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. The fact that Respondent reported the employment to JET clearly shows he was not trying to conceal his employment. The evidence in this case does not support the allegation that Respondent committed an IPV.

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 not established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

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



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

Date Signed: June 17, 2014

Date Mailed June 17, 2014

201433712/GFH

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:

