

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

**IN THE MATTER OF:**

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

Reg. No.: 14-016837  
Issue No.: 3005; 4005  
Case No.: ██████████  
Hearing Date: April 06, 2015  
County: CALHOUN (DISTRICT 21)

**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 April 6, 2015, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included Respondent, ██████████

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and State Disability Assistance (SDA) 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 and SDA?

**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 5, 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/SDA benefits issued by the Department.
4. Respondent was aware of the responsibility to report that the household gross income exceeded the simplified reporting limits and/or to report his employment and wages to the Department within 10 days of receiving the first payment reflecting the change.
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 FAP/SDA fraud period is October 1, 2011 to January 31, 2012 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP and SDA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP and SDA 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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.

### **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.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (January 2011), p. 1.

Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 1. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 1. Respondent's applicable group size in this case is one. RFT 250 indicates that the simplified reporting income limit for a group size of one is \$1,180. RFT 250 (October 2011), p. 1. RFT 250 indicates that the simplified reporting income limit for a group size of one is \$1,174 before the policy was effective October 1, 2011. RFT 250 (October 2010), p. 1.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (June 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
  - Starting or stopping employment.
  - Changing employers.
  - Change in rate of pay.
  - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

In this case, the Department alleges that Respondent who is a food assistance simplified reporter, committed an IPV of his FAP benefits because he failed to report his that his employment earnings exceeded the reporting limits. Moreover, the Department alleges that Respondent committed an IPV of his SDA benefits because he failed to report his employment and wages to the Department, which caused an overissuance of SDA benefits.

First, the Department presented Respondent's applications dated May 2, 2011 and June 20, 2011/August 23, 2011, to show that the Respondent was aware of his responsibility to report changes as required. See Exhibit 1, pp. 11-55. The Department also presented Respondent's Notice of Case Action dated June 16, 2011, which notified him that his SR reporting limit for a group size of one is \$1,174. See Exhibit 1, pp. 56-58.

Second, the Department presented Respondent's Verification of Employment received on April 30, 2013. See Exhibit 1, pp. 61-66. The employment verification indicated that Respondent began employment on July 25, 2011 and it ended on August 20, 2012. See Exhibit 1, pp. 61-66.

Third, the Department presented Respondent's semi-annual contact report (contact report) dated November 2, 2011, which occurred during the alleged fraud period. See Exhibit 1, pp. 59-60. In the contact report, the form indicated that the household's monthly gross earned income (before taxes) used in his FAP budget is [REDACTED]. See Exhibit 1, p. 60. Respondent indicated that his household's gross earned income did not change by more than [REDACTED] from the amount above. See Exhibit 1, p. 60.

Fourth, the Department presented a signed affidavit from Respondent dated August 18, 2014. See Exhibit 1, p. 88. In the affidavit, Respondent indicated that he did not report his employment income exceeding the [REDACTED] SR limit because he believed he was still below this limit. See Exhibit 1, p. 88. Moreover, Respondent indicated that he thought the form (contact report) asked if his gross income exceeded [REDACTED] a week, [REDACTED] a month. See Exhibit 1, p. 88.

At the hearing, Respondent testified that he did not intentionally defraud the Department. Respondent acknowledged and agreed with the statement he made in his affidavit. See Exhibit 1, p. 8. Respondent argued that he thought the form (contact report) asked if his gross income exceeded [REDACTED] a week, not [REDACTED] a month. See Exhibit 1, p. 88. Respondent acknowledged this error and agreed to repay the OI amount.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP/SDA benefits. Respondent credibly testified that he did not intentionally defraud the Department. Respondent credibly testified that he misinterpreted the contact form, which led to contact form being completed improperly. Respondent's credibility is supported by his affidavit because the testimony provided at the hearing was consistent to his statement in the affidavit signed

nearly seven to eight months ago. See Exhibit 1, p. 88. In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning his employment wages for the purpose of maintaining Michigan FAP/SDA eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/SDA 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 failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP/SDA benefits. Therefore, Respondent is not subject to a disqualification under the FAP/SDA program. BAM 720, p. 16.

### **Overissuance**

Additionally, 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 715, p. 6.

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

A client error is present in this situation because Respondent testified that he agreed to the OI amount and that he would he would repay it. Respondent testified that he did not dispute the total OI amount being ██████████ from his issuance of FAP and SDA benefits. This Administrative Law Judge (ALJ) will not further discuss the OI as Respondent agreed to repay this amount. Thus, the Department is entitled to recoup ██████████ of FAP/SDA benefits it issued from October 1, 2011 to January 31, 2012.

