

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 15-006225  
Issue No.: 1005, 3005  
Case No.: [REDACTED]  
Hearing Date: June 10, 2015  
County: Muskegon

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and 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, telephone hearing was held on June 10, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: Betty Day.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP) and Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Family Independence Program (FIP) and 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 April 28, 2015, 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. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2009, through January 31, 2011.
4. On an applications for assistance dated October 10, 2008, August 13, 2009, February 10, 2010, April 15, 2010, and a Redetermination (DHS-1010) dated December 27, 2010, the Respondent acknowledged the duty to report all income received by benefit group members 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. On April 28, 2015, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826).
7. This was Respondent's first alleged IPV.
8. 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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (May 1, 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.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 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.

### **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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2015), pp 1-20.

Income reporting requirements are limited to the following:

- Unearned income:
  - Starting or stopping a source of unearned income.
  - Change in gross monthly income of more than \$50 since the last reported change. BAM 105.

On an applications for assistance dated October 10, 2008, August 13, 2009, February 10, 2010, April 15, 2010, and a Redetermination (DHS-1010) dated December 27, 2010, the Respondent acknowledged the duty to report all income received by benefit group members to the Department.

The Respondent reported to the Department on her October 10, 2008, application for assistance that her employment ended on September 24, 2008, but failed to report her receipt of unemployment compensation benefits. The Department presented evidence that the Respondent received unemployment compensation benefits from July of 2008, through April of 2009. From February 1, 2009, through April 30, 2009, the Respondent received FIP benefits totaling \$ [REDACTED] and would not have been eligible for any of those benefits if she had reported her unemployment compensation. The Respondent

received a FIP overissuance of \$ [REDACTED]. From February 1, 2009, through April 30, 2009, the Respondent received FAP benefits totaling \$ [REDACTED] but would have been eligible for only \$ [REDACTED] if she had reported her unemployment compensation benefits. The Respondent received a FAP overissuance of \$ [REDACTED].

The Respondent reported to the Department on her August 13, 2009, application for assistance that her unemployment compensation had ended August 11, 2009. The Respondent failed to report that she received unemployment compensation from December 5, 2009, through March 20, 2010, until she submitted another application for assistance on February 10, 2010. In January of 2010, the Respondent received FIP benefits totaling \$ [REDACTED] that she would not have been eligible for and FAP benefits totaling \$ [REDACTED] but would have been eligible for only \$ [REDACTED] if she had reported her unemployment compensation benefits. The Respondent received a FIP overissuance of \$ [REDACTED] and a FAP overissuance of \$ [REDACTED].

The Respondent reported to the Department on her April 15, 2010, application for assistance that her application for social security benefits had been denied but that she had appealed this determination. The Respondent was awarded social security benefits for herself and her children but these benefits were not reported to the Department until she submitted a Redetermination (DHS-1010) on December 27, 2010. This report was not acted on by the Department in time to affect her January 2011 benefits. From July 1, 2010, through January 31, 2011, the Respondent received FIP benefits totaling \$ [REDACTED] but would have been eligible for only \$ [REDACTED] if she had reported all social security income being received within the household. The Respondent received a FIP overissuance of \$ [REDACTED]. From July 1, 2010, through January 31, 2011, the Respondent received FAP benefits totaling \$ [REDACTED] but would have been eligible for only \$ [REDACTED] if she had reported all social security income being received within her household. The Respondent received a FAP overissuance of \$ [REDACTED].

The Respondent demonstrated her understanding of her duty to report starting and ending income to the Department as demonstrated by the reports of changes to her circumstances on her applications for benefits. The Respondent demonstrated her understanding of the effects of changes to her household income but the evidence supports a finding that she reported ending income in a timely manner but not starting income.

The Respondent argued that she did report changes to her income to the Department in a timely manner but failed to provide evidence of when she made her reports. The only evidence available at the hearing of when the Respondent reported changes to her circumstances was her applications for assistance. These applications for assistance do not include all the income the Department later verified through its electronic databases.

The Respondent argued further that the Department is using her eligibility date for social security benefits and not the dates that she actually received this unearned income.

The Department presented evidence from its databases that indicate that only income reported by the Social Security Administration as being issued was applied towards her eligibility, and the eligibility date was not used.

The evidence supports a finding that the Respondent received overissuances of FIP and FAP benefits.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

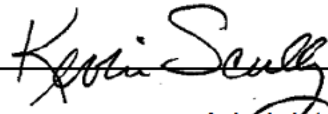
This Administrative Law Judge finds that the Department has established by clear and convincing evidence that the Respondent was aware of her duty to report all changes to her circumstances that would affect her eligibility to receive benefits but that she intentionally failed to make timely reports of these changes for the purposes of receiving Family Independence Program (FIP) and Food Assistance Program (FAP) benefits that she would not have been eligible to receive otherwise.

### **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. From February 1, 2009, through April 30, 2009, the Respondent did receive an OI of Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]
3. From January 1, 2010, through January 31, 2010, the Respondent did receive an OI of Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]
4. From July 1, 2010, through January 31, 2011, the Respondent did receive an OI of Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]

5. From February 1, 2009, through April 30, 2009, the Respondent did receive an OI of Family Independence Program (FIP) program benefits in the amount of \$ [REDACTED]
6. From January 1, 2010, through January 31, 2010, the Respondent did receive an OI of Family Independence Program (FIP) program benefits in the amount of \$ [REDACTED]
7. From July 1, 2010, through January 31, 2011, the Respondent did receive an OI of Family Independence Program (FIP) program benefits in the amount of \$ [REDACTED]
8. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
9. It is FURTHER ORDERED that Respondent be disqualified from the Family Independence Program (FIP) and the Food Assistance Program (FAP) for a period of 12 months.

  
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Kevin Scully  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **7/1/2015**

Date Mailed: **7/1/2015**

KS/las

**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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

[REDACTED]

