



apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-16.

2. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2016, Redetermination (DHS-1010) form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 16.
3. Respondent reported on his [REDACTED] [REDACTED] 2016, Redetermination (DHS-1010) form that he was not employed. Exhibit A, pp 14.
4. Department records indicate that Respondent reported to the Department that he has not received earned income since July 31, 2015. Exhibit A, p 23.
5. Department records indicate that on October 14, 2016, Respondent reported to the Department that his circumstances had not changes and that he was not working. Exhibit A, p 23.
6. Department records indicate that Respondent was deferred from the Partnership. Accountability. Training. Hope. (PATH) and approved for Family Independence Program (FIP) benefits based on his reported physical impairments that prevented him from working. Exhibit A, p 23.
7. Respondent received Food Assistance Program (FAP) benefits totaling \$1,967 from December 1, 2016, through June 30, 2017. Exhibit A, p 34.
8. Respondent received Family Independence Program (FIP) benefits totaling \$2,821 from December 1, 2016, through June 30, 2017. Exhibit A, pp 32-33.
9. Respondent failed to report to the Department that he was employed and received earned income from October 14, 2016, through July 14, 2017. Exhibit A, pp 24-31.
10. On January 2, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,788 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
11. The Department's OIG filed a hearing request on January 2, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
12. This was Respondent's first established IPV.
13. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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 (January 1, 2016), pp 12-13.

## **Overissuance**

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), 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. Changes that must be reported include changes of employment status and the receipt of earned income from employment. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2019), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2019), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2016, Respondent acknowledged the duties and responsibilities of receiving FIP and FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent reported to the Department that he was not employed and that he was unable to work due to physical impairments.

Respondent received FAP benefits totaling \$1,967 from December 1, 2016, through June 30, 2017, and FIP benefits totaling \$2,821 from December 1, 2016, through June 30, 2017. The FAP benefits were based on his receipt of FIP as his sole source of income, and FIP benefits were based on no earned income as well as a deferral from the PATH program.

Respondent reported to the Department that he was not working due to physical impairments. Respondent failed to report when he returned to work and received earned income from October 14, 2016, through July 14, 2017. If Respondent had reported his October 14, 2016, paycheck in a timely manner, the Department would have redetermined his eligibility for ongoing FIP and FAP benefits no later than the first benefit period after November 15, 2016.

Respondent received earned income from employment in each month from December 1, 2016, through June 30, 2017, exceeding the gross monthly income limit of

\$1,736 for a group of two to receive any FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2016), p 1. Therefore, Respondent was not eligible for any of the FAP benefits he received, and he received a \$1,967 overissuance of FAP benefits.

Respondent received earned income from employment in each month from December 1, 2016, through June 30, 2017, exceeding the income limit of \$403 for a group of two to receive any FIP benefits. Department of Health and Human Services Reference Table Manual (RFT) 210 (December 1, 2013), p 1. Therefore, Respondent was not eligible for any of the FIP benefits he received, and he received a \$2,821 overissuance of FIP benefits.

### **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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, 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 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that 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.*

Respondent acknowledge the duties of receiving FIP and FAP benefits on a Redetermination (DHS-1010) received by the Department on June 28, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent became eligible for FIP and FAP benefits after reporting that he was unable to work due to physical impairments. Respondent avoided being referred to the PATH program based on his reported physical impairments. As a result of Respondent's failure to report the earned income he received but failed to report, Respondent received an overissuance of FIP and FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report returning to work and failed to report receiving earned income for the purposes of maintaining his eligibility for FIP and FAP benefits that he would not have been eligible for otherwise.

### **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 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.

The record evidence indicates that this is Respondent's first established IPV.

The Department has established an Intentional Program Violation (IPV).

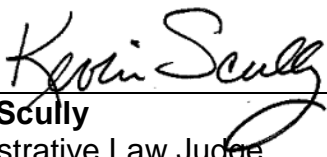
### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$1,967.

3. Respondent did receive an OI of Family Independence Program (FIP) benefits in the amount of \$2,821.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$4,788 in accordance with Department policy.
5. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) and the Family Independence Program (FIP) for a period of 12 months.

KS/dh

  
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**Kevin Scully**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

