

2. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2012, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 31.
3. Respondent reported on her [REDACTED] [REDACTED] 2012, application for assistance that she was the only person in the household that was employed. Exhibit A, pp 24-25.
4. On February 25, 2015, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a group of six with a \$354 monthly allotment of benefits effective March 1, 2014, which was based on reported earned income in the gross monthly amount of [REDACTED]. Exhibit A, pp 34-39.
5. On a Redetermination (DHS-1010) form received by the Department on May 1, 2014, Respondent acknowledged her duties and responsibilities including the duty to report all household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 40-45.
6. Respondent acknowledged under penalties of perjury that her May 1, 2014, Redetermination (DHS-1010) form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 45.
7. Respondent reported on her May 1, 2014, Redetermination form that she was employed and receiving earned income in the gross bi-weekly amount of [REDACTED]. Exhibit A, pp 43.
8. Respondent acknowledged under penalties of perjury that her Semi-Annual Contact Report (DHS-1046) dated July 17, 2014, was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 46-47.
9. Respondent reported on her July 17, 2014, Semi-Annual Contact Report (DHS-1046) that her household income had not increased by more than \$100 more than the [REDACTED] that was being applied towards her eligibility for ongoing benefits. Exhibit A, pp 46-47.
10. Respondent failed to report that a member of house Food Assistance Program (FAP) benefit group was employed since November 16, 2005, and received earned income from April 11, 2014, through January 16, 2015. Exhibit A, pp 48-50.
11. Respondent received Food Assistance Program (FAP) totaling \$3,144 from April 1, 2014, through September 30, 2014. Exhibit A, p 33.

12. On January 9, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$3,144 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
13. The Department's OIG filed a hearing request on January 9, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
14. This was Respondent's first established IPV.
15. 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 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 (October 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 all household income. 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.

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on an application for assistance dated [REDACTED] 2016, which included her duty to report all household income to the Department. 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 she was the only person in the household that was employed. On February 25, 2014, the Department notified Respondent that she was approved for FAP benefits based on a household income in the gross monthly amount of [REDACTED].

On a Redetermination (DHS-1010) form received by the Department on May 1, 2015, Respondent again acknowledged her duty to report all household income to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent

acknowledged under penalties of perjury that her May 1, 2014, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported that she was receiving earned income in the gross-biweekly amount of [REDACTED], and that no one else in the household was employed. On July 17, 2014, Respondent reported to the Department that there had not been a change of more than \$100 in the gross monthly income of her household over the [REDACTED] that was being applied towards her eligibility for FAP benefits,

Respondent falsely reported that she was the only person in her household that was employed and failed to report that a member of her FAP benefit group was receiving earned income from April 11, 2014, through January 16, 2015. This unreported earned income exceeded [REDACTED] in each bi-weekly period during that period.

Respondent received FAP benefits totaling \$3,144 from April 1, 2014, through September 30, 2014. If Respondent had reported all of her household income to the Department in a timely manner, then she would not have been eligible for any FAP benefits during that period because the combined gross monthly income for the FAP benefit group exceeded the \$3,423 gross monthly income limit for a group of six. Department of Health and Human Services Reference Table Manual (RFT) 250 (December 1, 2013), p 1. Therefore, Respondent received a \$3,144 overissuance of FAP 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 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 acknowledged the duties and responsibilities of receiving FAP benefits including the duty to report all household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent reported her income to the Department, but failed to report the earned income being received by a member of her FAP benefit group. If Respondent had reported this additional income to the Department, it would have caused the group to be ineligible for any FAP benefits based on that income.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to truthfully report her household income to the Department for the purposes of maintaining her eligibility for FAP benefits that she 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).

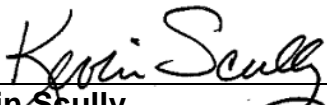
DECISION AND ORDER

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 \$3,144.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$3,144 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/dh



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

