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

IN THE MATTER OF:

[redacted]

Reg. No: 201248645
Issue No: 3055
Case No: [redacted]
Hearing Date: June 12, 2012
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge for a Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on June 12, 2012. Respondent did not appear. The record did contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [redacted] over-issuance of Food Assistance Program (FAP) benefits between June 1, 2010 and December 31, 2010 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. Respondent intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination by not reporting that he was incarcerated.

2. Respondent was clearly and correctly instructed regarding reporting responsibilities as evidenced by his signature of the assistance application.

3. Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

4. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report his change of circumstances as being incarcerated which made him no longer eligible for Food Assistance

Program (FAP) benefits. Respondent also engaged in FAP trafficking by giving his EBT card to someone for their use while he was incarcerated.

5. June 1, 2010 to December 31, 2010 has correctly been determined as the over-issuance period in this case.

6. As a result of the Intentional Program Violation (IPV) Respondent was issued [redacted] of Food Assistance Program (FAP) benefits he was not eligible for during the over-issuance period. Those benefits were subsequently trafficked by being passed on to his girlfriend, who spent the benefits.

7. Respondent was sent an Intentional Program Violation packet.

8. On May 2, 2012, the Office of Inspector General submitted the agency request for hearing of this case.

CONCLUSIONS OF LAW

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 AACS 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 (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

PAM 700 explains OI discovery, OI types and standards of promptness. PAM 705 explains agency error and PAM 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.

> Clear and convincing evidence is evidence that "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV
FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.

- An administrative hearing decision.

- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

MA and CDC Only

IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**
- Signs a DHS-4350 **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**
- Is found responsible for the IPV by an Administrative Law Judge conducting an IPV or debt establishment hearing.

OVER-ISSUANCE PROCESSING
Recoupment Specialist Referral
FIP, SDA, CDC and FAP Only

Bridges refers most client errors, CDC provider errors and suspected IPV to the RS. Use the DHS-4701, Over-issuance Referral, to refer manual OIs.

MA and AMP Only

Do not refer these OIs to the RS. See BAM 710 for suspected IPV processing.

SER and ESS Only

Refer these OIs to the RS only when IPV is suspected and a FIP, SDA or FAP OI also exists for the same period. Follow procedures in the SER manual for recoupment of SER. Follow procedures in BEM 232 for Direct Support Services (DSS) OIs.

OVER-ISSUANCE PERIOD
OI Begin Date
FIP, SDA, CDC and FAP

The OI 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 the OI was referred to the RS, whichever is later.

To determine the first month of the OI period (for OIs 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.

OI End Date
FIP, SDA, CDC and FAP

The OI period ends the month (or pay period for CDC) before the benefit is corrected.

OVER-ISSUANCE AMOUNT
FIP, SDA, CDC and FAP

The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. (Use BAM 715 inserted below)

BAM 715
OVERISSUANCE CALCULATION
FIP, SDA, CDC and FAP
Benefits Received FIP, SDA and CDC Only

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 OI calculation is the **gross** (before AR deductions) amount **issued** for the benefit month. FAP participation is obtained in Bridges under Benefit Issuance.

Back to BAM 720

OIG RESPONSIBILITIES

All Programs

Suspected IPV cases are investigated by OIG. Within 18 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 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 OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs combined is [redacted] or more, **or**

- The total OI amount is less than [redacted], **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.

BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS
DEPARTMENT POLICY
FIP, RAP, SDA, CDC and FAP

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. Policy for IPV disqualifications and overissuances is found in BAM 700 and 720.

FAP TRAFFICKING
FAP

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. These FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or

- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

The length of the disqualification period depends on the dollar amount of the FAP benefits trafficked. A person is disqualified for life for a FAP trafficking conviction of $500 or more. The standard IPV disqualification period is applied to FAP trafficking convictions less than [redacted]. See Disqualification in BAM 720.

A person is disqualified for life if convicted in court of trading FAP to acquire firearms, ammunition or explosives.

A person is disqualified if convicted in court of trading FAP in order to acquire illegal drugs. The disqualification period is two years for the first conviction. The second conviction results in a lifetime disqualification.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record. The buying or selling of FAP benefits for cash or consideration other than eligible food.

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 established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a [redacted] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup.

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 established by clear and convincing evidence that Respondent trafficked the [redacted] of Food Assistance Program (FAP) benefits by giving his EBT card to his girlfriend to use while he was incarcerated.

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

/s/

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

Date Signed: July 10, 2012

Date Mailed: July 11, 2012

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/tb

cc: [redacted]