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

IN THE MATTER OF:

[redacted]

Reg. No.: 201322039
Issue No.: 3055
Case No.: [redacted]
Hearing Date: April 24, 2013
County: Ottawa County DHS (70)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on April 24, 2013 from Lansing, Michigan. The Department was represented by [redacted] of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving 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 January 4, 2013 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 bene fits during the period of July 1, 2011 through November 30, 2011 and from March 28, 2012 through July 31, 2012.

4. Respondent was aware of t he responsibility to timely report to the Department any changes in residency.

5. Respondent had no apparent physical or m ental impairment that would limit his understanding or ability to fulfill this requirement.

6. The Department's OIG indicates that the time period they are considering the fraud period is J uly 1, 2011 through November 30, 2011 and March 28, 2012 through July 31, 2012.

7. During the alleged fraud per iod, Respondent was issued $1,825.00 in FAP benefits from the State of Michigan.

8. Respondent was entitled to $0.00 in FAP during these time periods.

9. Respondent did receive an OI in the amount of $1,825.00 under the FAP program.

10. The Department has established that Respondent committed an IPV.

11. A notice of disqualificat ion hearing was mailed to Res pondent 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 Br idges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amend ed, and is implemented by the federal regulations contained in Title 7 of the Code of Feder al Regulations (CFR). The Department (formerly known as the Fam ily Independence Agency) administers FAP pursuant to MCL 400.10, *et seq*., and 1999 AC, Rule 400.3001 through Rule 400.3015.

BAM 700 and BAM 720 govern In tentional Program Violat ions (IPVs). Generally speaking, when a client group receives more benefits than they are ent itled to receive, the Department must attempt to recoup the overissuance (OI). BAM 700. 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 720.

According to BAM 720, "Suspec ted IPV" means an OI exists for which all t hree 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.

An IPV is suspected when there is 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.

The Department's OIG requests IPV hearings for cases when:

- FAP trafficking OIs are not forwarded to the prosecutor,
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, **and**
- the total overissuance amount is $1000 or more, **or**
- the total overissuance amount is less than $1000, **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.

With regard to FAP cases only, an IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 700.

For FIP, SDA, CDC and FAP cases, the Department will disqualify an active **or** inactive recipient who:

• Is found by a court or hearing decision to have committed IPV, **or**
• Has signed a Request for Waiver of Disqualification Hearing (DHS-826) or Disqualification Consent Agreement (DHS-830), **or**
• Is convicted of concurrent receipt of assistance by a court, **or**
• For FAP, is found by SOAHR or a court to have trafficked FAP benefits. BAM 720.

A disqualified recipient remains a member of an active group as long as he/she lives with them. BAM 720. Other eligible group members may continue to receive benefits. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720. If the court does not address disqualification in its order, the standard period applies. BAM 720.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

In the present case, the Department has established that Respondent was aware of the responsibility to timely and accurately report to the Department all changes in income and employment. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM 105. Respondent's signature on the Assistance Application in this record certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. The record contained an Electronic Benefit Transfer (EBT) History of FAP purchases during the time period in question which demonstrated that Respondent used his Michigan-issued EBT card in Illinois for 30 days or more. The evidence shows that Respondent did not report this to the Department within 10 days as required per policy. In addition, Respondent had no apparent physical or mental impairment that limits his understanding or ability to fulfill these reporting responsibilities.

The Department has also shown by substantial, material and competent evidence that Claimant had concurrent receipt of FAP benefits. Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222. Here, Claimant received FAP benefits from Michigan and Illinois during the same time period.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a $1,825.00 overissuance. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that:

1. Respondent **did** commit an IPV.

2. Respondent **did** receive an overissuance of program benefits in the amount of $1,825.00 from FAP.

The Department is **ORDERED** to initiate recoupment procedures for the amount of $1,825.00 in accordance with Department policy.

It is FURTHER **ORDERED** that Respondent be disqualified from FAP for a period of 10 years.

IT IS SO ORDERED.

/s/_____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 29, 2013

Date Mailed: April 30, 2013

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 fo r the county in which he/she lives.

CAP/aca

cc: [redacted]