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

#### IN THE MATTER OF:



Reg. No.: 2013-6274

Issue No.: 3055 Case No.:

Hearing Date: July 3, 2013
County: Genesee-06

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

### HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Departm ent of Human Servic es' (Department) request for a hearing. After due notice, a telephone hear ing was held on July 3, 2013, from Lansing, Michigan. The Department was represented by Resident A gent 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 400.3178(5).

# <u>ISSUES</u>

- 1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
- Did Respondent commit an Intentional Program Violation (IPV)?
- Should Respondent be disqualified from receiving FAP?

#### FINDINGS OF FACT

The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

- The Depar tment's OIG f iled a hearing request on 10/22/12 to establish an OI of benefits received by Respondent as a re sult of Responden t having allegedly committed an IPV.
- 2. The OIG h as requested that Respondent be disqualified from receiving program benefits.
- 3. Respondent was a recipient of F AP benefits during the perio d of January 1, 2010, through March 30, 2012.
- Respondent was aware of the responsibility to report all household members and all household income.

- 5. Respondent had no apparent physical or m ental impairment that would limit the understanding or ability to fulfill this requirement.
- 6. The Department's OIG indicates that the time period they are considering the fraud period is February 1, 2010, through March 30, 2012.
- 7. During the alleged fraud period, Re spondent was issued \$ in FAP benefits from the State of Michigan.
- 8. Respondent was entitled to \$ in FAP benefits during this time period.
- 9. Respondent did receive an OI in the amount of \$ under the FAP program.
- 10. In February 2012, a data mi ning project i dentified Res pondent as a recipient that had receiv ed multiple 10 or more EBT Br idge cards in 2011. An EPPIC report shows that from December, 2010 through March, 2012, Respondent reported 17 cards lost or stolen. A review of Respondent's IG-311 EBT history revealed several suspicious transactions, including even do llar transactions and numerous multiple transactions in a short period of time. (Dept. Ex. 16-18).
- 11. The Department has established that Respondent committed an IPV.
- 12. This was Respondent's first FAP IPV.
- 13. A notice of hearing was mailed to Respond ent at the I ast 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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700.

Suspected IPV means an OI exists for which all three of the following conditions exist:

 The client intentionally failed t o report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and

- The client was clearly and co rrectly 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 sus pected when there is clear and convinc ing evidence that the client has intentionally withheld or misr epresented 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:

- benefit overissuanc es 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 previ ous intentional program violation, or
  - the alleged IPV involves FAP trafficking, or
  - the alleged fraud involves c oncurrent receipt of assistance,
  - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an IP V disqualifies that client from receiving certain program benefits. A disqualified reci pient remains a member of an active group as long as he lives with them. Other eligib le 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, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifet ime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720.

A review of Respondent's EBT history reveal ed several transactions indicative of FAP trafficking from December, 2010 through Marc h, 2012, totaling \$ in trafficked benefits. According to departmental policy, the documentation used to establish the trafficking determination can be circumstantial, such as an affidavit from a store owner or sworn testimony from a feder all or state investigator of how much a client could have reasonably trafficked in that store. BAM 720, p 7 (2/1/13).

Based on a review of the evidence, Resp ondent rec eived an overissuance of FAP benefits and the department is entitled to recoup \$ 100.000.

## 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, concludes that:

- 1. Respondent did commit a FAP IPV.
- 2. Respondent did receive an OI of program benefits in the amount of \$ from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP program for a period of 12 months.

Vicki L. Armstrong Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: July 23, 2013

Date Mailed: July 25, 2013

**NOTICE**: The law pr ovides 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.

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