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.: 201330974
Issue No.: [redacted]
Case No.:
Hearing Date: August 21, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich. Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a hearing was held on August 21, 2013. Respondent did not appear. The record did not contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. The Department was represented by [redacted] of the Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [redacted] over-issuance of Food Assistance Program (FAP) benefits between September 1, 2011, and March 31, 2012, which the Department is entitled to recoup?

Whether Respondent received duplicate Food Assistance Program (FAP) benefits in violation of Department of Human Services Bridges Eligibility Manual (BEM) 222 page 2?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

(1) At this hearing the Department made a verbal motion to reduce the alleged over-issuance period to September 1, 2011, through March 31, 2012, and the over-issuance amount to [redacted]. The amendment is to Respondent's advantage and the motion was granted.

(2) Respondent intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination by failing to report his change of physical residence to another state.

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

(4) Respondent has no apparent physical or mental impairment that limits his understanding or ability to fulfill their reporting responsibilities.

(5) Respondent committed an Intentional Program Violation (IPV) by: intentionally failing to report his change of physical residence to Texas: continuing to receive and use Food Assistance Program (FAP) benefits through Michigan when he was no longer a resident of Michigan and no longer eligible for benefits through Michigan; and receiving Food Assistance Program (FAP) benefits from Michigan and Texas concurrently until January 19, 2012, in violation of Department of Human Services Bridges Eligibility Manual (BEM) 222.

(6) September 1, 2011, to March 31, 2012, has correctly been determined as the over-issuance period in this case.

(7) As a result of the Intentional Program Violation (IPV) Respondent received a [redacted] over-issuance of Food Assistance Program (FAP) benefits during the over-issuance period.

(8) On February 27, 2013, the Office of Inspector General submitted this request for a hearing to disqualify Respondent from receiving Food Assistance Program (FAP) benefits.

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.

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

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.

OVERISSUANCE 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.

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.

In this case the Department asserted an intentional program violation and OI period which runs from September 1, 2011, through October 31, 2012. The Department had combined two separate OI periods and two separate intentional program violations into this one case. The first OI period is between September 1, 2011, and March 31, 2012. The Department policy cited above identifies the OI end date as the month before the benefit is corrected. In this case Respondent did not receive Food Assistance Program (FAP) benefits between March 31, 2012, and July 9, 2012. Department policy does not provide any specific criteria to identify or define "benefit correction". However, it is certain that the benefit is corrected when the recipient is no longer receiving any benefits. The alleged over-issuance of Food Assistance Program (FAP) benefits Respondent received after July 9, 2012, would be caused by a specific and separate action of Respondent after July 9, 2012. Department policy provides for separate and larger disqualifications for a first, second, and third intentional program violation. Different consequences for separate intentional program violations, shows the intention to differentiate between separate actions causing OI's. Department policy does allow combination of OI amounts for different programs when all the OIs were caused by the same specific action. That is not the same as combining OI amounts from separate OI periods caused by separate actions.

The notice for this hearing was issued identifying it as a first Food Assistance Program (FAP) intentional program violation and a receipt of duplicate Food Assistance Program (FAP) benefits violation. Respondent's due process rights would be violated if this hearing resulted in a determination that Respondent had committed two separate Food Assistance Program (FAP) intentional program violations and a receipt of duplicate Food Assistance Program (FAP) benefits violation.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record.

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 and received Food Assistance Program (FAP) benefits from Michigan and Texas concurrently in violation of

Department of Human Services Bridges Eligibility Manual (BEM) 222. This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department may disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with Department of Human Services Bridges Administration Manual (BAM) 720 (2013).

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: 08/26/2013

Date Mailed: 08/27/2013

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 for the County in which he/she lives.

GFH/sw

cc: [redacted]