

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

IN THE MATTER OF:



Reg. No.: 2013-53771
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: November 5, 2013
County: Wayne 18

ADMINISTRATIVE LAW JUDGE: Dale Malewska

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on November 5, 2013, from Lansing, Michigan. The Department was represented by [REDACTED], Lead Regulation Agent 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).

ISSUES

1. Did Respondent receive an over issuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 June 25, 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 FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report any changes in circumstances – including residency.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2010 through July 31, 2010.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent 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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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 Mich Admin Code, R 400.3001 through R 400.3015.

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 \$ [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.

BAM 720 (7-1-2013), p. 12.

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 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 reporting responsibilities.

BAM 700 (7-1-2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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; see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department has established that the Respondent was aware of her responsibility to timely and accurately report to the Department any and all household changes – including residency. Department policy requires the beneficiary to report any change in circumstance that affects eligibility or benefit amount within 10 (ten) days. See BAM 105

While the Respondent's signature on any application for assistance [See Finding of Fact #4] would certify an awareness that fraudulent participation in the FAP program could result in criminal or civil or administrative claims being brought - production of that record is necessary to establish intent. Her status under policy [BEM 220] regarding any potential job commitment or student status is unknown and untested.

Absence of Michigan based charges of her EBT card – alone – does not establish residency anywhere. Production of application materials signed off by the Respondent would have been useful materials in establishing her intent with regard to Michigan residency.

Based on this record there is no reason to conclude that the Respondent was doing anything in nearby [REDACTED] (even if the record demonstrates EBT use) other than visiting. In establishing its burden of proof by a clear and convincing standard – even in the absence of the Respondent – it would have been useful to address the issue of temporary – *but excusable absence* – under BEM 212

There was no evidence that the Respondent had any apparent physical or mental impairment that limited her understanding or ability to comply with these reporting requirements.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. However, disqualification must be proven with clear and convincing evidence - a threshold not met today - owing to the absence of critical application materials/records otherwise available. Accordingly, the ALJ lacks a clear firm belief that a program violation took place.

In this case, the record demonstrates that Respondent is not guilty of an 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, concludes that the Department failed to establish by clear and convincing evidence that the Respondent committed an IPV.

It is therefore ORDERED that the Department shall delete the OI and cease any recoupment action.

/s/
Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/10/14

Date Mailed: 1/10/14

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.

DM/tb

cc:

