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

#### IN THE MATTER OF:



Reg. No.: 2014-2805

Issue No.: 3005

Case No.: Hearing Date:

January 9, 2014

County: Ingham

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

### 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 Thursday, January 9, 2014 from Lansing, Michigan. The Department was represented by Julie Price, Agent #117, Regulation Agent with 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 overissuance (OI) of ⊠ Food Assistance Program (FAP) 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  $\boxtimes$  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:

2014-2805/CGF	
1.	The Department's OIG filed a hearing request on October 2, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2.	The OIG $\boxtimes$ has requested that Respondent be disqualified from receiving program benefits.
3.	Respondent was a recipient of $\ igsimes$ FAP benefits issued by the Department.
4.	Respondent  was aware of the responsibility to report changes in her/his residence to the Department where the Respondent used FAP benefits exclusively

5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

in the State of Ohio for over thirty (30) consecutive days.

- 6. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2011 through January 31, 2013 (fraud period).
- 7. On the Assistance Application, 1171, signed by Respondent on July 15, 2011 and July 26, 2011, Respondent reported that she/he intended to stay in Michigan.
- 8. During the alleged fraud period, Respondent was issued  $\boxtimes$  FAP benefits from the State of Ohio.
- 9. During the fraud period, Respondent was issued in  $\boxtimes$  FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
- 10. The Department alleges that Respondent received an OI in  $\boxtimes$  FAP benefits in the amount of \_\_\_\_\_.
- 11. This was Respondent's  $\boxtimes$  first alleged IPV.

# **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 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 \$1000 or more, or
  - the total OI 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, p. 10.

#### **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, 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 (emphasis in original); 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.

#### Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710, p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

## **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Respondent failed to report her/his change in residency from the State of Michigan to the department. Department Exhibit 14-31. In addition, the Respondent received concurrent benefits from the State of Michigan and the State of Ohio during the contested time period. Department Exhibit 32-35. As a result, the Respondent received an total overissuance of FAP benefits of that the Department is required to recoup. Department Exhibit 36-59.

Even though the Respondent spent her FAP benefits from the State of Michigan in the State of Michigan, the benefits were received during the contested time period when she was receiving FAP benefits in the State of Ohio, while the Respondent used the State of Ohio FAP benefits in Ohio, then returned to Michigan and used the Michigan FAP benefits. The Respondent received FAP benefits for the same time period from the State of Michigan and the State of Ohio. Department Exhibit 60-67.

#### **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, if any, concludes that:

- 1. Respondent  $\boxtimes$  did commit an IPV by clear and convincing evidence.
- 2. Respondent  $\boxtimes$  did receive an OI of program benefits in the amount of from the following program(s)  $\boxtimes$  FAP.

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

 $\boxtimes$  It is FURTHER ORDERED that  $\boxtimes$  Respondent be personally disqualified from participation in the FAP program for 10 years.

Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: <u>01/16/2014</u>

Date Mailed: 01/16/2014

**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.

# CGF/pw



