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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-9306
Issue No(s).: 3005
Case No.: [redacted]
Hearing Date: March 3, 2014
County: Oakland #04

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 March 3, 2014 from Lansing, Michigan. The Department was represented by [redacted], 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 ☒ 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
   ☐ 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 November 5, 2013, to establish continued program disqualification and an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG ☒ has not requested that the Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of ☒ FAP benefits issued by the Department.

4. Respondent ☒ was aware of the responsibility to not engage in unauthorized transactions.

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 September 1, 2011 through June 8, 2012.

7. During the fraud period, Respondent was issued $[redacted] in ☒ FAP benefits by the State of Michigan.

8. The Department alleges that Respondent received an OI in ☒ FAP benefits in the amount of $[redacted]

9. Respondent's alleged IPV history was not stated although he remains disqualified as of this writing under BEM 203.

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 program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .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 Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and

- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and

- The Respondent 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 Respondent 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 Respondent 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 his responsibility to timely and accurately report to the Department any and all household changes – including *residency and absconder* status. Department policy requires the beneficiary to report any change in circumstance that affects eligibility or benefit amount within 10 (ten) days. *See* BAM 105. *See also* Exhibit #1, p. 20[1]

The Respondent's threshold signature on his redetermination/application for assistance certifies that he was aware that fraudulent participation in the FAP program could result in criminal or civil or administrative claims to be brought against him. Today's record contains an Electronic Benefit Transaction (EBT) history of FAP purchases during the time period in question which demonstrated the Respondent used his Michigan-issued EBT in Virginia for more than 30-days. Exhibit #1, pp. 13 – 16.

The evidence brought today also establishes that the Respondent did not report this move or his probation/parole-absconder status to his Department eligibility specialist (ES) within the 10 (ten) day reporting period required under policy.

Furthermore, the Respondent did not produce a plan demonstrating a definite return date to Michigan. His location was believed to be [redacted] as he last impermissibly used his EBT in Michigan while on absconder status – thus disqualification under BEM 203 Finally, the OIG's proofs[2] established through clear and convincing evidence that Respondent's absence from Michigan had been longer than 30-days – there was no recorded verification of the Respondent's intent to remain in Michigan. *See* BEM 212 and 220 – throughout.

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

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent 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.

Respondents 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 Medicaid. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the Respondent is otherwise eligible. BAM 710 (7-1-2013), p. 2. Respondents are disqualified for periods of one year for the first IPV, two years for the second IPV,

[1] It became apparent early in the hearing that there was a technical problem with regard to exhibit numbering and page numbering. With the assistance of the Department's witness, [redacted] the error was identified and accounted for. All exhibits referenced by the witness were found by the ALJ and are identified by their bold-type page numbering.

[2]Serial EBT transactions (*44 transactions*) in [redacted] between the dates of May 15, 2011 and March 24, 2012; *See also*, FAP Disqualification under BEM 203 probation/parole offenders for the time period of August 11, 2012 through June 8, 2012. Exhibit #1 – pp. 4, 9 – 16.

lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, *But see,* BEM 203 pp. 1,2 of 4. [7-1-2013]

In this case, the record demonstrates that Respondent's case was closed on July 6, 2012 without a corresponding request for a continued period of disqualification. However, under BEM 203 Disqualification exists for "…as long as the violation occurs." *See also* Exhibit #1 - throughout

Over-issuance

When a Respondent 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 record also demonstrates that the Respondent received an OI of FAP in the amount of $[redacted] for the time period of September 1, 2011 through June 8, 2012. Exhibit #1, page 4.

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. The Department has established by clear and convincing evidence that Respondent ☒ did commit an intentional program violation (IPV).

2. Respondent ☒ did receive an OI of program benefits in the amount of $[redacted] from the following program ☒ FAP.

The Department is ORDERED to ☒ initiate recoupment procedures for the amount of $[redacted] in accordance with Department policy.

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

Date Signed: 3/10/14

Date Mailed: 3/12/14

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: [redacted]