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

IN THE MATTER OF:

Registration No: 201411284

Issue No: 1005 Case No:

Hearing Date: March 5, 2014

Muskegon County DHS



ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

Upon the request for a hearing by the Depar tment of Human Services (Department), this matter is before the under signed Administrative Law Judge pursuant to MCL 400.9, and in acc ordance with Titles 7, 42 and 45 of the Code of Federal Regulat ion (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a hearing was held on Marc h 5, 2014, at which Respondent failed to appear. The hearing 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). The Department was represented by a regulat ion agent with the department's Office of Inspector General (OIG).

<u>ISSUE</u>

Whether Respondent committed an intentional program violation (IPV) involving the Family Independence Program (FIP) and whether Respondent received an over issuance of FIP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

Based on the clear and conv incing evidenc e pertaining to the whole record, the Administrative Law Judge finds as material fact:

- The Depar tment's OIG filed a request for hearing to establish an over issuance of FIP benefits received as a result of a determination that Respondent committed a first IPV in this program. The agency further requested that Respondent be disqualified from receiving further FIP benefits for a period of one year.
- On November 19, 2009, Respo ndent signed an ass istance application (DHS-1171) and reported t herein that she was "on strike" from her employment with Fashion Bug. In signing the application, Respondent

certified with her s ignature, under penalty of perjury, that all the information she had written on the form or told to a specia list was true. Respondent further certified with her s ignature that she receiv ed an d reviewed a copy of the Acknowledgements, which include the obligation to report changes in one's circumstances within ten days. Re spondent further certified with her signature that she understood she c ould be prosecuted for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received. (Department Exhibit 1, pp. 10-25)

- 3. On October 18, 2012, the Depar tment obtained verific ation that Respondent received earnings from her employment with Fashion Bug from at least January 1, 2010 th employment Respondent failed to properly and timely report to the Department. (Department Exhibit 2, pp. 26-28; Department Exhibit 3, pp. 29-30)
- As a result of Respondent's refusal or failure to properly and timely report earned income from her employ ment, she received an over iss uance of FIP benefits in the amount of \$ for the per iod March 1, 2010 through June 30, 2010. (Department Exhibit 4, pp. 31-31; Department Exhibit 5, pp. 33-40)
- 6. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to properly report all changes in circumstances, including her receipt of earned income, to the Department within ten days of the occurrence, as required by agency policy.
- 7. There was no apparent physical or m ental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.
- 8. This was the first determined FIP IPV committed by Respondent.
- 9. Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualif ication Hearing and accompanying documents that were mailed to Respondent at the last known address, and which constituted due notice, were not returned to the Michigan Administrative Hearing System (MAHS) by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Service s Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Re ference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administra tive Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Family Independence Progr am (FIP) was establis hed pursuant to the Personal Responsibility and W ork Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, et seq. The Department administers the FIP progr am pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. Department policies for both programs are found in the Department of Hum an Services Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In the present matter, t he Department requested a heari ng to establis h an over issuance of FIP benefits, claiming that the over issuance was the result of an IPV committed by Respondent. Further, the Department asked that Respondent b e disqualified from the FIP and program for a period of one year.

When a client or group receives more benefit s than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. A suspected intentional program violation (IPV) is defined as an overissuance where:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination,
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and

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 The client has no apparent physical or mental impairment that limits hi s or her understanding or ability to fulfill their repor ting responsibilities. [BAM 720, p 1.]

An IPV is suspected by the Department when a client int entionally withheld or misrepresented information for the purpose of es tablishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. In bringing an IPV action, the agenc y carries the burden of establishing the v iolation with clear and convincing evidence. BAM 720, p 1.

An over is suance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the over issuance was referred to an agency recoupment specialist, whichever is later. This period end son the month before the benefit is corrected. BAM 720, p 6. The amount of over issuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by t he OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosec uting attorney; refers suspected IPV cases that meet criteria for IPV administrat ive hearings to the Michiga n Administrative Hearings System (MAHS); and returns non-IPV cases back to the Department's recoupment specialist. BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit over issuances are not forwarded to the prosecuting attorney's office;
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
- The total OI amount for the FAP 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 inv olves conc urrent receipt of assistance or
 - •• The alleged fraud is committed by a state/government employee. BAM 720, p 10.

The OIG represents the Depart ment during the hearing process in IPV matters. BA M 720, p 9. When a client is determined to have committed an IPV, the following standard periods of disqualific ation from the program are applied (unless a court orders a different length of time): one year for the first IPV; two years for the second IPV; and lifetime for the third IPV. BAM 720, p 13. Further, IP Vs involving the FAP result in a

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ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p 13.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group me mbers – those member s may continue to receive benefits. BAM 720, p 12.

In this case, at the March 5, 2014 disqualif ication hearing, the OIG's representative, regulation agent James Hall, provided cred ible, sufficient, undisputed testimony and other evidence establishing that, on No vember 19, 2009, Respondent signed a assistance application (DHS-11 71) and reported ther ein that s he was "on strike" from her employ ment with Fashion B ug. In signing the application, Respondent certified with her signature, under penalt y of perjury, that all the in formation she had written on the form or told to a specialist was true. Respondent further certified with her signature that she received and reviewed a copy of the Acknowledgement s, which include the obligation to report changes in one's circumstances within ten days. Respondent further certified with her signatur e that she understood she coul d be prosecuted for fraud and/or be required to repay the e amount wrongfully received if she intentionally gave false or mi sleading information, misrepresented, hid or wit hheld facts that may cause her to receive assistance she should not have received.

The OIG further established that Respondent was employed at Fashion Bug from at least January 1, 2010 through December 23, 2010, which employment Respondent failed to properly and timely report to the Department. Finally, the OIG established that, a result of Respondent's refu sal or failure to properly and timely report earned income from her employment, she received an over issuance of FIP benefit s in the amount of \$1,319.00 for the period March 1, 2010 through June 30, 2010.

Testimony and other evidence must be we ighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credi bility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Respondent was, or should have been, fully aware of her respon sibility to timely report her receipt of earned income. Moreover , Responden t's signature on her assistance application established that she was, or should have been, fully aware that the intentional withholding or misrepresentation of information potentially affecting her eligibility or benefit level could result in criminal, civil, or administrative action. Finally, there was no evidence presented indicating that Respondent suffered from any physical or mental impairment that limited her ability to under stand and fulfill her reporting responsibilities. See BEM 720, p 1.

Based on the credible, su fficient, and undisputed test imony and other evidence presented by the OIG, the Administrative Law Judge finds that the OIG established, under the clear and convinc ing standard, that Respondent committed an IPV in this matter, resulting in an over issuance of FIP benefits in the amount of period March 1, 2010 through Ju ne 30, 2010. Further, bec ause this was Respondent's first FIP IPV, the one-year disqualification period from the program is appropriate.

DECISION AND ORDER

Based on the above findings of f act and conclusions of law, and for the reasons stated on the record, this A dministrative Law Judge decides that Respondent committed an intentional program violation involving the FIP program and received an over issuance of FAP benefits in the amount of

It is therefore ORDERED THAT:

- The Depar tment shall initiate re coupment procedures as a result of Respondent's intentional program violation in the amount of \$ and
- Respondent is personally dis qualified from participation in the FIP for a period of one year. The disqualification period will begin <u>IMMEDIATELY</u> as of the date of this order.

Suzanne

D. Sonneborn Administrative Law Judge for Maura D. Corrigan, Director of Human Services

Department

Date Signed: March 6, 2014

Date Mailed: March 7, 2014

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 for the county in which he lives.

SDS/hj

CC:

