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

#### IN THE MATTER OF:



2014-9869 Reg. No.: Issue No.: Case No.: Hearing Date: County:

3005

February 2, 2014 Wayne-17

# ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

# HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

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, at elephone hearing was held on Februar y 27, 2014 fr om Lansing, Regulation Agent of the Michigan. The Department was represented by 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

- Did Respondent receive an ov erissuance (OI) of Food Assistance Program (FAP) 1. 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 dis qualified from receiving Food As sistance Program (FAP)?

# FINDINGS OF FACT

The Administrative Law Judge, based on t he 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 es tablish an OI of benefits received by Respondent as a result of Res pondent having allegedly committed an IPV.
- 2. The OIG h as requested that Respondent be disgualified from receiving program benefits.

- 3. Respondent was a recipient of FAP benefits issued by the Department.
- 4. Respondent was aware of the responsibility to timely report to the Department any changes in circumstances including changes in 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 t he time period it is considering the fraud period is December 1, 2011 through November 30, 2012.
- 7. During the alleged fraud period, Respondent was issued **\$ 1000 million** n FAP 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 r eceived an OI in FAP benefits in the amount of
- 9. This was Respondent's first alleged IPV.
- 10. A notice of hearing was mailed to Respondent at the last k nown address and was not returned by the US Post Office 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), Depar tment of Human Services Program Eligibility Manual (PEM), and Department of Hu man Services Reference Schedules Manual (RFS).

The Department contends that Respondent received a n OI of FAP benefits due to an IPV. The Department seeks recoupment of FAP benefits and FAP progra m disqualification.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amend ed, and is implemented by the federal regulations contained in Title 7 of the Code of Feder al Regulations (CFR). The Department (formerly known as the Fam ily 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 forw arded to the prosecutor,

- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a r eason other than lack of evidence, and
  - the total OI amount for t he 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 c oncurrent receipt of assistance (see BEM 222), or
    - the alleged fraud is committed by a state/government employee.

BAM 720 (12-1-2011), p. 12.

### Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed t o report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and co rrectly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ab ility to fulfill reporting responsibilities.

BAM 700 (12-1-2011), 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 r eduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); se e also 7 CF R 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

Clients must report changes in circumstances that potentially affect eligibility or ben efit amount. BAM 105. Clients are required to r eport changes in circum stances within 10 (ten) days after the client is aware of them . BAM 105. These changes include, but are

not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from t he move; (4) vehicles ; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child car e needs or providers. BAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms . BAM 105. Clients must completely and truthfully ans wer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

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). The weight and credibility of this evidenc e is genera lly 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW 2d 46 (1975); *Zeeland Far m Services, Inc v J BL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the substantial, material and competent evidence on the whole record.

Respondent was advised of his rights and responsibilities concerning program benefits. Respondent's signature on the Assistance Application in this record certifies that he was aware of these rights and responsibilities. The Department has established that Respondent intentionally failed to report information needed to make a correct benefits determination. Specifically, Respondent intent ionally and fraudulently failed to report a change of address which was evidenced by El ectronic Benefit Transfer (EBT) FAP card usage hist ory of transactions is sued to Respondent. Respondent had no apparent physical or mental im pairment that limits his understanding or ability to fulfill these reporting responsibilities. Policy permits the use of circumstantial evidence.

#### **Disqualification**

A court or hearing decision that finds a client committed IPV di squalifies that client from receiving program benefits. BAM 720 (12-1-2011), p. 12. A disqualified recipient remains a member of an active group as lo ng 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 di squalification 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 no t cause denial of current or future MA if the client is otherwise eligible. BAM 710 (1 0-1-2009), p. 2. Clie nts are dis qualified for periods of one year for the first IPV, tw o years for the second IPV, lif etime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Based on the above, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits.

#### <u>Overissuance</u>

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 matter, the Department has show n that Respondent rec eived an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

#### **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 did commit an IPV by clear and convincing evidence.
- 2. Respondent did receive an OI of F AP program benefits in the amount of

The Depar tment is ORDERED t o initiate recoupment procedures for the amount of **1** n accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

CAOD

**C. Adam Purnell** Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: March 4, 2014

Date Mailed: March 4, 2014

**<u>NOTICE</u>**: 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/she lives.

CAP/las

