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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-21741
Issue No(s).: 3005
Case No.: [redacted]
Hearing Date: March 18, 2014
County: Wayne #35

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 18, 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 ☒ 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:

1. The Department's OIG filed a hearing request on January 17, 2014, to establish an OI and debt collection 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 ☒ 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 December 1, 2011 through May 30, 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. 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 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.

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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 was properly made by the Department.

However, absence of Michigan based charges on her EBT card – alone – does not establish residency anywhere else. Production of EBT materials such as proof of transactions, time periods and the like would have been useful information to establish an out of state excursion – beyond 30 days – in [redacted]. But, for unknown reasons no evidence supporting such was argued or presented for review.

[redacted] is a nearby by state, [redacted] somewhat less, but the Respondent – for some reason – could have maintained residence in Michigan or been seeking medical treatment, job hunting or vacationing – all permissible under policy. Given the brief excursion [8-days] nothing provided today established with clear and convincing evidence that the Respondent established residency in [redacted].

Based on this record, there is no reason to conclude that the Respondent did anything in [redacted] other than visit. It would have been useful to address the issue of Texas where the documentary evidence provided hinted at relocation and the use of EBT benefits in an unknown amount. *See* Exhibit #1, pp. 8 – 11.

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 Respondent committed IPV disqualifies that Respondent 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 documentary evidence 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.

There was no evidence that an OI of benefits occurred.

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 not commit an intentional program violation (IPV).

2. Respondent ☒ did not receive an OI of program benefits in the amount of $[redacted] from the following program(s) ☒ FAP.

3. The Department is ORDERED to
   ☒ delete the OI and cease any recoupment action.
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Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/31/14

Date Mailed: 4/1/14

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]