

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25738
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 1, 2014
County: Kent

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 April 1, 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) and Medicaid 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)? Medical Assistance (MA)?

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 February 12, 2014, to establish an OI and recoupment of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP and MA 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 January 1, 2012 - September 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 MA 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 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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 evidence¹ that the Respondent has intentionally withheld or misrepresented information for the

¹See *also*; In *Re Martin*, 450 Mich 204 at page 277 (1995) “We agree that the clear and convincing evidence standard, [is] the most demanding standard applied in civil cases...”

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.

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] could demonstrate an awareness that fraudulent participation in the FAP program might result in criminal or civil or administrative claims being brought - production of that record should not be relied upon as the sole discoverable element of evidence necessary to establish intent to commit dual breaches of policy – as suggested in the Department's proofs. See Exhibit #1, at pages 1, 34 and 37. The Respondent's status under policy [BEM 220] regarding any potential job commitment or other excusable status was unknown as of the date of hearing – while admittedly unlikely in the face of the certification from the [REDACTED] which showed no dual participation or intersecting dates of EBT use – such excusable action could not be ruled out particularly in view of the unpersuasive evidence marshalled by the Department in its flawed exhibit.

It is unknown what Items 2 and 3 were meant to capture in terms of proof. See Exhibit #1 at page 9

Absence of Michigan based charges of her EBT card – alone – does not establish residency anywhere. Evidence Item #4 did not establish EBT card use in [REDACTED] – it appeared to be a Bridges report. Furthermore, there was no tally of total FAP use in [REDACTED] in the body of the exhibit to support the total alleged by the Department in its summary. [See Exhibit #1 – throughout.] Again, nothing was found in the Department's proofs to prove [REDACTED] residency or abandonment of Michigan residency. See Exhibit #1 at page 34.

Production of misrepresentation materials referenced by the Department would have been useful in establishing the Respondent's intent with regard residency/FAP OI and Medicaid. Instead, the Department's exhibits actually contradicted each other internally. Use of an EBT card – alone – proves nothing with regard to abandoning residency or establishing residency.

To meet its burden of proof by a clear and convincing standard – the Department is required to present its proofs with *some* exacting measurement² – frankly, on review nothing is clear to this reviewer other than that the Respondent applied for assistance in Michigan and that she used her EBT card in Louisiana.

²Subject to the more exacting measurement of persuasion – clear and convincing proof. McCormick, Evidence (4th ed) §340, page 575

In the absence of the Respondent it would have been useful to address the full complement of possible – *but excusable absences*³ – if any - and to have items of documentary evidence actually correspond to a retrievable page number or obvious signal for the reviewer to easily locate. It simply was not the case today and thus the Department's case fails for lack of convincing proof as well.

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 mismatched and confused documentary record. See Exhibit #1 – throughout. Accordingly, the ALJ lacks a clear firm belief that any program violation took place.

In this case, the record demonstrates that Respondent is not guilty of an IPV.

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 and MA.

The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: 4/22/14

Date Mailed: 4/22/14

³See BEM 220

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/tub

cc:

