IN THE MATTER OF:

████████████

Reg. No.: 2014-31074
Issue No(s).: 3005
Case No.: ████████
Hearing Date: May 7, 2014
County: Alpena-Alcona

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, May 7, 2014 from Lansing, Michigan. The Department was represented by ████████████ ████ 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 22, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG ☒ has requested that the Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits issued by the Department.

4. Respondent ☒ was aware of the responsibility to properly use the Michigan Bridge Card.

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 October 1, 2011 through March 31, 2012 (fraud period).

7. During the fraud period, Respondent was issued $████ in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $█ in such benefits during this time period.

8. The Department alleges that Respondent received an OI in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA 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 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 $▌▌▌ or more, or
  - the total OI amount is less than $▌▌▌ **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, p. 10.

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, 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 (emphasis in original); 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.

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 MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the Respondent is otherwise eligible. BAM 710, p. 2. Respondents are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

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 Respondent used her/his FAP benefits at ████████████ ██, which was a store that was identified and convicted of FAP benefit trafficking. The Respondents were allowed to purchase ineligible items with their FAP benefits of cigarettes, alcohol, and synthetic drugs. Department Exhibit 8-73. The Respondent was a Respondent identified during the investigation with transaction histories of ██████████████████████████ ██ which were included in sale. Department Exhibit 74-98. Therefore, the Department has met its burden that the Respondent did not utilize proper usage of a Michigan Bridge Card. As a result, the Respondent received an over-issuance of FAP benefits of $████ that the Department is required to recoup.

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 ☐ did not commit an intentional program violation (IPV).

2. Respondent ☒ did receive an OI of program benefits in the amount of $████ from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

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

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☒ It is FURTHER ORDERED that Respondent be disqualified from ☐ FIP ☒ FAP ☐ SDA ☐ CDC for a period of ☒ 12 months.

Carmen G. Fahie

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Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
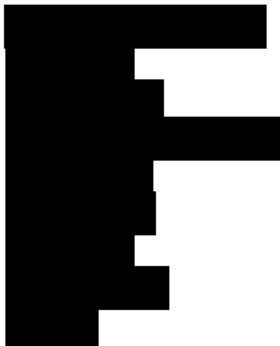Department of Human Services

Date Signed: 5/20/14

Date Mailed: 5/21/14

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.

CGF/tb

cc: ███████████
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