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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-27997
Issue No(s).: 3005
Case No.: [redacted]
Hearing Date: April 14, 2014
County: Wexford

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 14, 2014 from Lansing, Michigan. The Department was represented by [redacted], Regulation Agent of the Office of Inspector General (OIG).

PRELIMINARY MATTER

Because the Notice of Hearing was returned to sender the Family Independence Program or FIP claim was dismissed for lack of service.

***.

☒ 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
   ☒ Family Independence Program (FIP) ☐ State Disability Assistance (SDA)
   ☒ Food Assistance Program (FAP) ☐ Child Development and Care (CDC)
   ☐ 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
   ☐ Family Independence Program (FIP)? ☐ State Disability Assistance (SDA)?
   ☒ Food Assistance Program (FAP)? ☐ Child Development and Care (CDC)?

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 24, 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 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 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 March 1, 2008 through May 31, 2008.

7. During the fraud period, Respondent was issued $[redacted] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits by the State of Michigan.

8. The Department alleges that Respondent received an OI in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ 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 returned by the US Post Office as undeliverable. *See* Preliminary Matter, above.

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 $[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. 7; BAM 720, p. 1.

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An IPV also 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.

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 changes – including spousal *employment.* Department policy requires the beneficiary to report any significant change in circumstance, under pain of perjury, that affects eligibility or benefit amount within 10 (ten) days. *See* BAM 105

While the Respondent's threshold signature on her application for assistance would certify an awareness that fraudulent participation in the FAP program could result in criminal or civil or administrative claims – production of that record [Assistance Application DHS 1171] is necessary to establish intent. Her status under policy [BEM 220] regarding job commitment at the time of application was uncontested. She had [redacted] and worked during the [redacted] Exhibit #1, page 21. This was not reported by the Respondent.

The Respondent's absence from hearing today did little to bolster her credibility in the face of persuasive documentary evidence. *See* Exhibit #1 - throughout

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent from receiving program benefits. BAM 720, p. 12. Disqualification must be proven with clear and convincing evidence - a threshold met today through the credible testimony of the Department's witness and his Exhibit #1 [throughout] which accurately captured the Respondent's knowing certification of duty to report and no employment on DHS 1171 assistance application. Accordingly, the ALJ has a clear and firm belief that a program violation took place.

In this case, the record demonstrates that Respondent is guilty of an IPV.

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 evidence clearly established that the Respondent received an OI of FAP benefits during the fraud period of [redacted] in the amount of $[redacted]

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 commit an intentional program violation (IPV).

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

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

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

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

Date Signed: 5/29/14

Date Mailed: 5/29/14

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]