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

IN THE MATTER OF:



Reg. No.: 2014-31513

Issue No(s).: 3005 Case No.:

Hearing Date:

April 29, 2014

County: Isabella

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 29, 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).

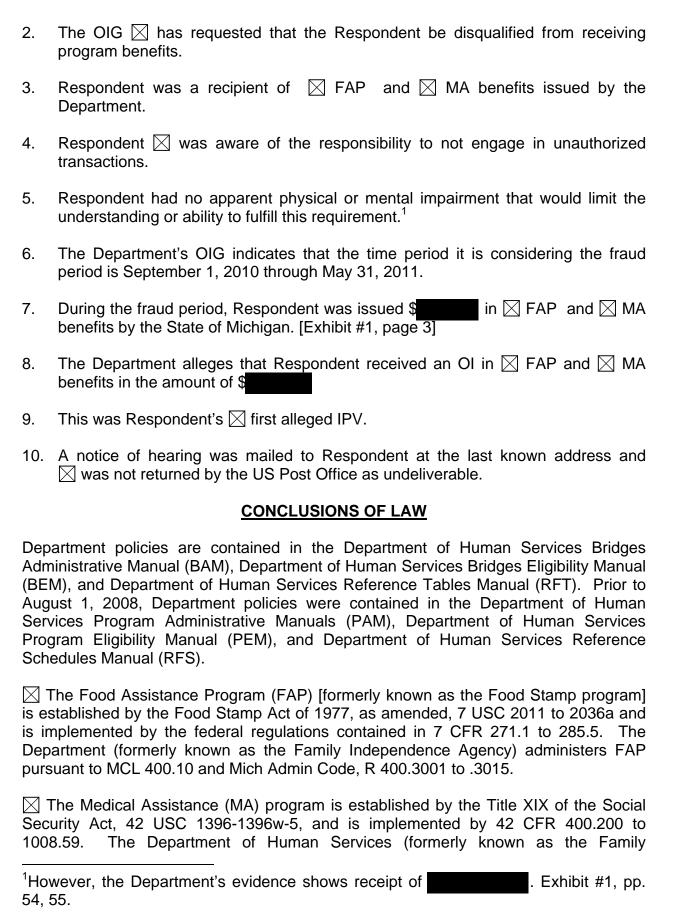
<u>ISSUES</u>

- 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)? ☑ Medicaid?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

 The Department's OIG filed a hearing request on January 16, 2014, to establish an OI and debt collection recoupment of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.



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 Ols 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 (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.

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.

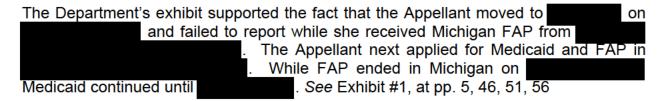
See BAM 105

The Respondent's threshold signature on her application for assistance certifies that she was aware that fraudulent participation in the FAP program could result in criminal or civil or administrative claims to be brought against her. Today's record contains an Electronic Benefit Transaction (EBT) history of FAP purchases during the time period in question which demonstrated the Respondent used her Michigan-issued EBT in for more than 30-days.

The evidence brought today also establishes that the Respondent did not report this move to her Department eligibility specialist (ES) within the 10 (ten) day reporting period required under policy.

Furthermore, the Respondent did not produce a plan demonstrating a definite return date to Michigan or details of a job search, medical treatment or an educational opportunity. Finally, the proofs² preponderated that her absence from Michigan had been longer than 30-days – there was recorded verification of the Respondent's intent to remain in Michigan. Exhibit #1, page 32, See also BEM 212 and 220 – throughout.

There was no persuasive evidence that the Respondent had any apparent physical or mental impairment that limited her understanding or ability to comply with these reporting requirements.



<u>Disqualification</u>

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

²Serial EBT transactions in _____ between the dates of Exhibit #1, pp. 49 - 50.

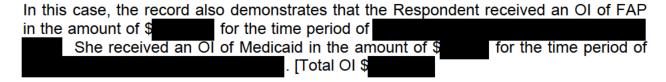
remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

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 (7-1-2013), 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.

In this case, the record demonstrates that Respondent is guilty of her first FAP IPV – which carries a 12-month period of disqualification.

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.



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 \boxtimes did 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.

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

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

Date Signed: 6/5/14

Date Mailed: 6/13/14

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:

