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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-29102
Issue No(s).: 1005, 2005, 3005
Case No.: [redacted]
Hearing Date: July 16, 2014
County: Genesee-02

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

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 July 16, 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 overissuance (OI) of Food Assistance Program (FAP), Family Independence Program (FIP), and Medical Assistance (MA) 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 FAP, FIP, and MA benefits?

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 March 4, 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 Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of FAP, FIP, and MA benefits issued by the Department.

4. Respondent was aware of the responsibility to use benefits only for purposes authorized by the Food Stamp Act of 1977, and to report changes in her circumstances that would affect her eligibility to receive benefits.

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, 2012 through July 31, 2012 for FAP, October 1, 2012 through November 30, 2012 for FIP, and October 1, 2012 through July 31, 2013 for MA (fraud period).

7. During the fraud period, Respondent was issued $[redacted] in FAP benefits, $[redacted] in FIP benefits, and $[redacted] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $0.00 in such benefits during this time period.

8. The Department alleges that Respondent received an OI in FAP benefits in the amount of $[redacted] FIP benefits in the amount of $[redacted] and MA benefits in the amount of $[redacted]

9. This was Respondent's second alleged IPV in the FAP program, and her first alleged IPV in the FIP and MA programs.

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 $1000 or more, **or**
  - The total OI amount is less than $1000, **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 (7/1/13), p. 12.

Intentional Program Violation
Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client **intentionally** failed to report information **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (7/1/13), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client 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 client 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.

In this case, Respondent used her FAP in Georgia from August 19, 2012 through August 18, 2013. The Department provided her with continuous FAP, FIP, and MA during that period. She received $[redacted] in FAP (Exhibit 1, pages 37 – 38), $[redacted] in FIP (page 24), and $[redacted] in MA (page 41). Because she was no longer a Michigan resident, she was not eligible to receive benefits from any of those programs.

Respondent did not provide the Department with notice that she had changed her address from Michigan. BEM 220 (4/1/14) states, "To be eligible, a person must be a Michigan resident." For FAP, "A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely." Similarly, when it comes to eligibility for Medicaid, BEM 220 states:

> A Michigan resident is an individual who is living in Michigan except for a temporary absence.

Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. Because Respondent was not living in Michigan, she was not eligible to receive FAP, FIP, or MA benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

Clients 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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/13), p. 2. Clients 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, Respondent committed an IPV by receiving benefits for an extended period of time, even though she was no longer a resident in Michigan. Because she has committed an IPV she is to be disqualified. Because she had a previous disqualification in the FAP program, she is subject to an extended disqualification period.

Overissuance

When a client 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, Respondent received $[redacted] in FAP, $[redacted] in FIP, and $[redacted] in MA. She was not entitled to those benefits. The Department has established an OI of $[redacted] which is to be recouped.

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 committed an intentional program violation (IPV).

2. Respondent received an OI of program benefits in the amount of $[redacted] in FAP, $[redacted] in FIP, and $[redacted] in 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 FAP for a period of 24 months, and FIP for a period of 12 months.

Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 21, 2014

Date Mailed: July 21, 2014

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.

DTJ/las

cc: [redacted]