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

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		Reg. No.: Issue No(s).: Case No.: Hearing Date: County:	201434833 3005 July 2, 2014 Oakland County DHS #2			
ADMINISTRATIVE LAW JUDGE: Kevin Scully						
HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION						
this and parti Afte The	n the request for a hearing by the Department matter is before the undersigned Administration in accordance with Titles 7, 42 and 45 of the icularly 7 CFR 273.16, and with Mich Administration of the icularly 7 CFR 273.16, and with Mich Administration of the icularly 7 CFR 273.16, and with Mich Administration of the icular	tive Law Judge pur he Code of Federa n Code, R 400.31 n July 2, 2014, fror	suant to MCL 400.9, al Regulation (CFR), 30 and R 400.3178.			
	Participants on behalf of Respondent include	d:				
purs	Respondent did not appear at the hearing an suant to 7 CFR 273.16(e), Mich Admin Code .3178(5).		•			
<u>ISSUES</u>						
1.	Did Respondent receive an overissuance (C Family Independence Program (FIP) Food Assistance Program (FAP) Medical Assistance (MA) benefits that the Department is entitled to re	State Disability A Child Developme	assistance (SDA) ent and Care (CDC)			
2.	Did Respondent, by clear and convincing evidence (IPV)?	vidence, commit an	Intentional Program			
3.	Should Respondent be disqualified from recommendation of the second seco	State Disability A	assistance (SDA)? ent 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 April 16, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2.	The OIG \boxtimes has \square has not requested that Respondent be disqualified from receiving program benefits.
3.	Respondent was a recipient of $\ \ \ \ \ \ \ \ \ \ \ \ \ $
4.	Respondent \boxtimes was \square was not aware of the responsibility to report whether he had any outstanding felony warrants to the Department.
5.	Respondent \square had \boxtimes did not have an 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, 2013, through April 30, 2014.
7.	During the fraud period, Respondent was issued \$\begin{array}{c} \text{ in } \subseteq \text{FIP} \times \text{FAP} \subseteq \text{SDA} \\ \text{CDC} \subseteq MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8.	The Department alleges that Respondent received an OI in \square FIP \boxtimes FAP \square SDA \square CDC \square MA benefits in the amount of \$
9.	This was Respondent's ⊠ first ☐ second ☐ third alleged IPV.
10.	A notice of hearing was mailed to Respondent at the last known address and \square was \boxtimes 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

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 \$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 (May 1, 2014), p. 12-13.

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 (May 1, 2014), p. 7; 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.

Disqualification

A court or hearing decision that finds a client committed IPV disgualifies that client from receiving program benefits. BAM 720, p. 15-16. 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. 16.

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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disgualified 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.

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, the Respondent acknowledged the responsibility to report any outstanding felony warrants to the Department on his application for assistance dated October 18. 2013. When the Respondent applied for Food Assistance Program (FAP) benefits reported to the Department that he did not have any outstanding felony warrants despite the fact that he had been indicted for Theft of Public Money in federal District Court for the District of Arizona. The Respondent received Food Assistance Program (FAP) benefits totaling \$ but would not have been eligible for any of these benefits if he had reported his indictment for Theft of Public Money. The Department has established by clear and convincing evidence that the Respondent failed to report his felony warrant and indictment for the purpose of receiving Food Assistance Program (FAP) benefits that he would not have been eligible to receive otherwise.

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 \bowtie has \bowtie has not established by clear and convincing evidence that Respondent committed an IPV.
2.	Respondent \boxtimes did \square did not receive an OI of program benefits in the amount of from the following program(s) \square FIP \boxtimes FAP \square SDA \square CDC \square MA.
3.	The Department is ORDERED to initiate recoupment procedures for the amount of in accordance with Department policy.
	t is FURTHER ORDERED that Respondent be disqualified from ☐ FIP ☑ FAP ☐ SDA ☐ CDC for a period of
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 \boxtimes 12 months. \square 24 months. \square lifetime.

Kevin Scully Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: July 9, 2014

Date Mailed: July 9, 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.

KS/hj

CC: