

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007327
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: November 18, 2014
County: MACOMB-DISTRICT 12

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 November 18, 2014 from Lansing, Michigan. The Department was represented by Regulation Agent [REDACTED] of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether that Intentional Program Violation (IPV) caused Respondent to receive a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits from February 1, 2013 – March 31, 2013 and December 1, 2013 – May 31, 2014 which the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. Respondent signed the affidavit in the June 1, 2012 Assistance Application (DHS-1171) and the April 25, 2013 Redetermination (DHS-1010) certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

2. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. Respondent committed two separate Intentional Program Violations (IPV) by intentionally failing to report the start of earned income on December 11, 2012 and again starting October 15, 2013.
4. In accordance with Bridges Administration Manual (BAM) 720 there are two separate over-issuance periods, one associated with each of the separate Intentional Program Violations (IPV).
5. During the first over-issuance period, February 1, 2013 – March 31, 2013, Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program benefits.
6. During the second over-issuance period, December 1, 2013 – May 31, 2014, Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program benefits.
7. The Department's OIG filed a disqualification hearing request on July 28, 2014.

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.

Up until October 1, 2014, Bridges Administration Manual (BAM) 720 Intentional Program Violation directed that the Department's OIG requests IPV hearings for the following cases:

Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**

The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, **or**

The total OI amount is less than \$500, **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 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

In this case the Department asserts a single Food Assistance Program (FAP) intentional program violation with two separate over-issuance periods. The Department has combined two separate over-issuance periods and two separate Intentional Program Violations into this one case. Department of Human Services' Bridges Administration Manual (BAM) 720 over-issuance period criteria are cited above. The over-issuance period end date is defined as the month before the benefit is corrected. Department policy does not provide any specific criteria to identify or define "benefit correction". However, it is certain that the benefit is corrected when the recipient is no longer receiving an over-issuance.

Because specific and separate actions caused the two separate over-issuance periods and amounts, they are not a single intentional program violation. Department policy provides for separate and larger disqualifications for a first, second, and third intentional program violation. Different consequences for separate intentional program violations, shows the intention to differentiate between separate actions causing over-issuances. Department policy does allow combination of over-issuance amounts for different programs when all the over-issuances were caused by the same single action. That is not the same as combining over-issuance amounts from separate over-issuance periods caused by separate actions.

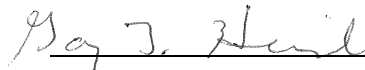
The over-issuance amount caused by the first Intentional Program Violation (IPV) during the associated over-issuance period is \$ [REDACTED]. The Department policy cited above, applicable to all circumstances prior to October 1, 2014, places a \$ [REDACTED] minimum on cases for the OIG to request an administrative hearing for. The evidence presented on the first intentional program violation does not meet the minimum identified in Department policy.

The over-issuance amount caused by the second Intentional Program Violation (IPV) during the associated over-issuance period is \$ [REDACTED]. The Department policy cited above, applicable to all circumstances prior to October 1, 2014, places a \$ [REDACTED] minimum on cases for the OIG to request an administrative hearing for. The evidence presented on the first intentional program violation does not meet the minimum identified in Department policy.

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, finds that the Department has NOT established by clear and convincing evidence that Respondent committed a single Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] or more over-issuance of benefits. Because the events involved in this case occurred before October 1, 2014, any single, first Intentional Program Violation (IPV) must have resulted in a \$ [REDACTED] or more over-issuance of benefits.

It is ORDERED that the actions of the Department of Human Services, in this matter, are NOT UPHOLD.



Gary Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/16/2014**

Date Mailed: **12/16/2014**

GFH/hj

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

CC:

