

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-010170
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2015
County: Alpena

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 April 28, 2015, 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.

In this case the Department has combined two separate Intentional Program Violation (IPV) allegations. The evidence concerning Trafficking was closely reviewed but does not support all of the alleged transactions.

ISSUES

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits from August 1, 2012 to March 31, 2013 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 intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination by failing to report a change of physical residence to another state.

(2) Respondent signed the affidavit in the Assistance Application (DHS-1171) certifying that they were aware of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

(3) Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

(4) Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report a change of physical residence to North Carolina and continuing to receive and use Michigan Food Assistance Program (FAP) benefits when no longer a physical resident of Michigan and no longer eligible for benefits through Michigan.

(5) In accordance with Bridges Administration Manual (BAM) 720, August 1, 2012 to March 31, 2013, has correctly been determined as the over-issuance period in this case.

(6) As a result of the Intentional Program Violation (IPV) Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits during the over-issuance period.

(7) On August 28, 2014, the Office of Inspector General submitted this request for a hearing to disqualify Respondent from receiving Food Assistance Program (FAP) benefits.

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 and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3011.

In accordance with Bridges Administration Manual (BAM) 720, the Department's OIG requests IPV hearings for the following cases:

FAP trafficking OIs that are not forwarded to the prosecutor, **OR** 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.

Intentional Program Violation

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission which they knew would result in receiving assistance s/he was not eligible for.

In this case, the Department presented an Assistance Application (DHS-1171) dated May 9, 2012 that Respondent submitted to the Department prior to the alleged over-issuance period. This application is sufficient to establish that Respondent was aware of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences. Respondent used their Michigan Food Assistance Program benefits in North Carolina beginning June 30, 2012 and did not report the change of physical residence.

Over-issuance Period

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 submitted evidence showing that Respondent began using Michigan Food Assistance Program benefits outside Michigan beginning June 30, 2012. Applying these requirements, the over-issuance period began August 1, 2012.

Over-issuance Amount

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented a benefit summary showing that the State of Michigan issued a total of \$ [REDACTED] in Food Assistance Program benefits to Respondent during the over-issuance period. Once Respondent was no longer a physical resident of Michigan, they were not eligible for any Michigan Food Assistance Program benefits. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program benefits.

Disqualification

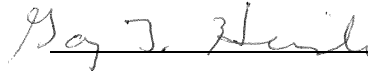
BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV, and a lifetime disqualification for the third IPV.

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 established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup. This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department may disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with Department of Human Services Bridges Administration Manual (BAM) 720.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/5/2015**

Date Mailed: **5/5/2015**

GH/las

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

