

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

IN THE MATTER OF:



Reg. No.: 14-012015
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: January 29, 2015
County: MUSKEGON

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 January 29, 2015 from Lansing, Michigan. The Department was represented by Regulation Agent Hall 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).

In this case the Department asserts a single Food Assistance Program (FAP) intentional program violation with two separate over-issuance periods, October 1, 2012 to May 31, 2013 and February 8, 2014 to March 27, 2014. 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 (2014) page 7 directs how to determine the beginning of an over-issuance period and the over-issuance period end date. The over-issuance period end date is defines 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 specific action. That is not the same as combining over-issuance amounts from separate over-issuance periods caused by separate actions.

The documentation sent to Respondent for this hearing was issued identifying it as a first Food Assistance Program (FAP) intentional program violation. The consequences of a first intentional program violation is a one year disqualification. The notice does not state the hearing is also for a second Food Assistance Program (FAP) intentional program violation. The consequence of a second Food Assistance Program (FAP) intentional program violation is a two year disqualification. Respondent's due process rights would be violated if this hearing resulted in a determination that Respondent had committed two separate Food Assistance Program (FAP) intentional program violations, and would be disqualified for three years total.

The second alleged Intentional Program Violation (IPV) and its corresponding over-issuance period of February 8, 2014 to March 27, 2014 is dismissed. The Department may pursue that IPV as a second, separate IPV.

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 October 1, 2012 to May 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 signed the affidavit in the July 26, 2012 Assistance Application (DHS-1171) 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 an Intentional Program Violation (IPV) by intentionally failing to report that her son, Derek, was no longer in her home.
4. In accordance with Bridges Administration Manual (BAM) 720 October 1, 2012 to May 31, 2013 has correctly been determined as the over-issuance period associated with this Intentional Program Violation (IPV).
5. During the over-issuance period, October 1, 2012 to May 31, 2013, Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program benefits.
6. This is Respondent's 1st Intentional Program Violation (IPV).

7. The Department's OIG filed a disqualification hearing request on September 26, 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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (2014) governs the Department's actions in this case. 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.

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 they knew would result in receiving assistance they were not eligible for.

In this case, the Department presented an Assistance Application (DHS-1171) dated July 26, 2012 that Respondent submitted to the Department prior to the alleged OI period. This application is sufficient to establish that Respondent certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

Subsequently Respondent's son, Derek, left her household in August or September of 2012 and was receiving Food Assistance Program benefits in Kansas beginning in September 2012. Respondent did not report his leaving. In addition, the Department presented a subsequent Assistance Application (DHS-1171) Redetermination dated January 8, 2013 on which Respondent listed Derek as being in the home.

This constitutes clear and convincing evidence that Respondent was aware of the responsibility to report changes and that she intentionally failed to report the reduced size of her household with knowledge that doing so would reduce her benefits. Therefore, the Department has established that Respondent committed an IPV.

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 Derek was receiving Food Assistance Program benefits in Kansas from the beginning of September 2012. Applying these requirements, the over-issuance period was properly calculated to begin October 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 Food Assistance Program benefit issuance summary showing that the State of Michigan issued Respondent the maximum amount of Food Assistance Program benefits for a benefit group size of two, \$████ per month, for October 2012 through May 2013. ($8 \times 367 = 2936$) With Derek out of the household, Respondent should only have received the maximum Food Assistance Program benefit amount for a group of one, \$200 per month. ($8 \times 200 = 1600$) Respondent received a \$1,336 over-issuance of Food Assistance Program benefits. ($2936 - 1600 = 1336$)

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.

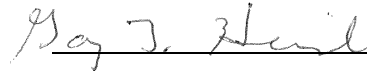
Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

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 \$████ over-issuance of Food Assistance Program benefits that the Department is entitled to recoup.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program and the Department may disqualify Respondent from receiving Food Assistance Program 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, Interim Director
Department of Human Services

Date Signed: **2/25/2015**

Date Mailed: **2/25/2015**

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:

