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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-012788
Issue No.: 3005
Case No.: [redacted]
Hearing Date: April 02, 2015
County: MUSKEGON

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 2, 2015, from Lansing, Michigan. The Department was represented by [redacted], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included the Respondent, [redacted]. The Respondent was present for the onset of the hearing and testified that she thought she reported everything to her worker. The Respondent was instructed to leave the hearing, by this Administrative Law Judge, as she had her child with her and the child was disrupting the proceedings and record.

ISSUES

Did the Respondent commit and Intentional Program Violation (IPV) and thereby receive an over issuance (OI) of the Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

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 October 8, 2014, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV.

2. The OIG has requested that the Respondent be disqualified from receiving program benefits.

3. The Respondent was a recipient of FAP benefits issued by the Department.

4. The Respondent aware of the responsibility to report all changes in household circumstances within 10 days to the Department.

5. The Respondent 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 November 1, 2009 to August 31, 2010 (fraud period).

7. During the fraud period, the Respondent was issued [redacted] in FAP benefits by the State of Michigan.

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

9. This was the Respondent's first alleged IPV.

10. A notice of hearing was mailed to the 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 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.

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 (2009), p. 10.

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 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, the Respondent failed to report her husband's income from July 30, 2009 to August 12, 2010, and the Respondent was clearly instructed regarding her reporting responsibilities, as evidenced by her testimony that she thought she had reported everything to her worker. This Administrative Law Judge concludes that the Respondent intentionally withheld information for the purpose of maintaining FAP benefits. The Respondent's testimony that she reported everything to her worker is not supported by

any other piece of evidence and is refuted by much evidence to the contrary. Therefore, the testimony of the Respondent is found to be less than credible. The Administrative Law Judge concludes that the Respondent intentionally withheld information for the purpose of maintaining FAP benefits and as such, the Respondent committed her first IPV.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 12.

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. 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. 13.

In this case, the Administrative Law Judge has concluded that the Respondent has committed her first IPV. As such, the appropriate disqualification period for the Respondent is one year.

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 report of the Regulation Agent regarding FAP benefits issued an FAP benefits that the Respondent was actually entitled to differ from the OI budgets in evidence. Furthermore, the OI budgets in evidence are not clear regarding the FAP benefits that the Respondent was actually entitled to any FAP benefits that the Respondent actually received. In short, this Administrative Law Judge cannot calculate the exact OI, and the Regulation Agent conceded it was not accurately documented in the report section of the hearing packet. As such, the proper OI amount cannot be determined.

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 the Department has met its burden of proving, by a clear and convincing standard, that the Respondent has committed her first IPV. The Department fails to meet its burden of proving the amount of the OI, and as such no recoupment proceedings are ordered. The Department is ordered to impose a disqualification period in accordance with departmental policy.

Susanne E. Harris

Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/3/2015**

Date Mailed: **4/3/2015**

SEH/sw

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: [redacted]