

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

IN THE MATTER OF:



Reg. No.: 14-017389
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 29, 2015
County: VAN BUREN

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and 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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on April 29, 2015, from Lansing, Michigan. The Department was represented by Regulation Agents [REDACTED] and [REDACTED] of the Office of Inspector General (OIG). Participants on behalf of Respondent included the Respondent, Casey FitzGerald and his witness [REDACTED].

ISSUES

Did the Respondent commit an Intentional Program Violation (IPV) and thereby received 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 December 11, 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. On the Redetermination form signed by the Respondent on December 3, 2012, the Respondent acknowledged he was reporting the truth, but did not acknowledge his reporting responsibilities.
5. It is not clear that the Respondent was aware of the responsibility to report changes in his residence to the Department.
6. The Respondent asserts that he has many mental disabilities which might impair or would limit the understanding or ability to fulfill reporting requirements.
7. The Respondent began using FAP benefits outside of the State of Michigan beginning on July 27, 2013 and until June 3, 2014.
8. The OIG indicates that the time period they are considering the fraud period is September 1, 2013 until May 31, 2014.
9. During the alleged fraud period, the Respondent was issued [REDACTED] in FAP benefits from the State of Michigan and the Department asserts that the Respondent was not eligible for any FAP benefits during the fraud period.
10. This was the Respondent's first alleged IPV.
11. 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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

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 .3015.

The 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1000 or more, or
 - the total 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 (2012), 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. 10.

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 testified that he suffered from many mental illnesses, but that his IQ was above 90, perhaps 98 and he can read and write and do basic math. The Respondent testified that he moved with his grandmother to Arizona and he told his caseworker, Irma, that he was moving there. The Department testified that Irma has not

worked for the Department since 2009. The Respondent's witness testified that he did make the call to cancel his case and that she was standing next to him when he did it. The Respondent's witness testified that he does not have a job, he is on disability and he cannot afford to pay back the alleged OI. The Administrative Judge finds the Respondent's testimony to be less than credible.

The Department bears the burden of proving, by a clear and convincing standard, that the Respondent was aware of his responsibility to report all changes in household circumstances within 10 days to the Department AND that his failure to report his move to Arizona was done with the purpose of maintaining FAP benefits. In this case, the Administrative Law Judge concludes that the evidence is insufficient to establish that the Respondent clearly understood his reporting requirements. There is no DHS-1171, Assistance Application in evidence which bears the Respondent's signature acknowledging his reporting responsibilities. The DHS-1010, Redetermination Form in evidence does not clearly inform the Respondent of his reporting responsibilities. There is no allegation that at the time the Respondent completed the DHS-1010, Redetermination Form that the Respondent was untruthful. The allegation is that, some months later, the Respondent failed to report his move to Arizona. As such, this Administrative Law Judge concludes that the Department has not met its burden, by a clear and convincing standard, of establishing that the Respondent committed an IPV.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the Department has not established by clear and convincing evidence that Respondent committed an IPV.



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

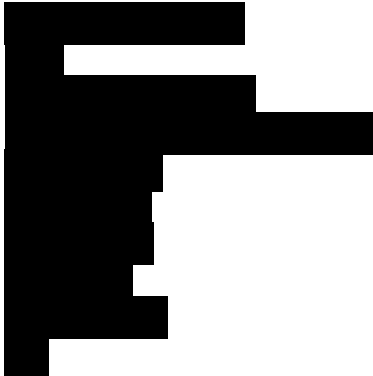
Date Signed: **4/30/2015**

Date Mailed: **4/30/2015**

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

cc:

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