

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-3429
Issue No(s): 3005; 2000
Case No.: [REDACTED]
Hearing Date: February 11, 2014
County: Oakland #04

ADMINISTRATIVE LAW JUDGE: Susanne E Harris

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, 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 February 11, 2014 from Lansing, Michigan. The Department was represented by [REDACTED] 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).

ISSUES

1. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP)? Medical Assistance?

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 3, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.

2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. There is no DHS-1171, Assistance Application signed by Respondent in the hearing packet. It can therefore not be determined whether or not the Respondent reported that he intended to stay in Michigan.
5. There is no DHS-1171, Assistance Application signed by Respondent in the hearing packet. It can therefore not be determined whether or not the Respondent was aware of the responsibility to report changes in his residence to the Department.
6. There is no DHS-1171, Assistance Application signed by Respondent in the hearing packet. It can therefore not be determined whether or not the Respondent had an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department alleges that the Respondent began using FAP and MA benefits outside of the State of Michigan; however there is no EBT FAP usage history in evidence. The Department alleges that the Respondent committed an IPV because the Respondent's son was a part of his group and was concurrently eligible for benefits in Texas and Michigan.
8. The OIG indicates that the time period they are considering the fraud period is September 1, 2011 through October 31, 2012.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued \$ [REDACTED] in MA benefits from the State of Michigan.
11. During the alleged fraud period, the Respondent's son was issued FAP and MA benefits from the State of Texas.
12. This was Respondent's first alleged IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was returned by the US Post Office as undeliverable.

Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualification Hearing, and which constituted due notice, was returned to the Michigan Administrative Hearing System (MAHS) by the United States Postal Service as undeliverable. Department policy dictates that when correspondence to a Respondent concerning an Intentional Program Violation (IPV) is returned as undeliverable, the

hearing cannot proceed except with respect to the Food Assistance Program (FAP). Department of Human Services Bridges Administrative Manual (BAM) 720 (2011), p. 10. Because the hearing concerned MA benefits, that portion of this hearing cannot proceed.

Therefore, the request for a disqualification hearing regarding the MA issue is **DISMISSED**.

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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$ [REDACTED] or more, or
 - the total OI amount is less than \$ [REDACTED] 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 (2011), 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 700 (2011), p. 6; 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. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing the conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW 2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010). Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

During the hearing, DHS alleged Respondent trafficked in FAP benefits because his son was also eligible for those benefits in Texas, while his son was also a member of his group. The OIG RA, did then alleged that the Respondent failed to report that his son was absent from the home. The RA was therefore willing to reduce his request for a 10 year disqualification for trafficking to a one year disqualification for failing to report household composition.

There is no DHS-1171, Assistance Application in evidence bearing the Respondent's signature. This is somewhat supportive of finding that Respondent did not commit fraud. Furthermore, there is no evidence in the record to establish that the Respondent knew that his son was receiving benefits in [REDACTED]. Most importantly, the information regarding concurrent receipt of benefits from [REDACTED] does not at all distinguish between the

Respondent and his son and refers to a "██████████" as opposed to a "██████████." As such, the Department is far from meeting its burden of proving, by clear and convincing standard, that the Respondent committed an 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. 13. 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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (2011), p. 2. 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 or FAP trafficking. BAM 720, p. 16. In this case, the Administrative Law Judge has determined that the Respondent has not committed an IPV. As such, no disqualification shall be imposed.

Over-issuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (July 2013), p. 1.

An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.* For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (2012), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

In this case, the Department relies on the email of another human services worker from ██████████ as proof that the Respondent's son is receiving concurrent benefits from ██████████ while being a part of the Respondent's FAP group. The Administrative Law Judge is not persuaded that the human services worker from ██████████ has even properly identified the Respondent or his ██████████ because she refers to a ██████████, as opposed to a ██████████ or a ██████████. As such, the Administrative Law Judge concludes that the Department did not meet its burden of proving, by clear and convincing standard, that the Respondent received an OI of FAP benefits.

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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent did not commit an intentional program violation (IPV).
2. Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program FAP and MA.

The Department is ORDERED to delete the OI and cease any recoupment action.

Susanne E. Harris

Susanne E Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/3/14

Date Mailed: 3/4/14

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

SEH/tb

cc:

[REDACTED]