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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-010997
Issue No.: 3005
Case No.: [redacted]
Hearing Date: January 08, 2015
County: WAYNE-DISTRICT 19

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 8, 2015, from Detroit, Michigan. The Department was represented by [redacted], Regulation Agent 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 overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving FAP benefits?

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 [redacted], to establish an OI of benefits for FAP received by Respondent as a result of Respondent having allegedly committed an IPV.

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

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

4. Respondent, from [redacted] through [redacted], made food stamp purchases in amounts inconsistent with average purchase amounts found in similar stores in the same city in which Respondent made purchases.

5. In December of 2013 the store from which Respondent made purchases was given a civil money penalty due to trafficking.

6. The fraud period is [redacted] through [redacted].

7. During the fraud period, Respondent was issued $818.83 in FAP benefits by the State of Michigan, and Respondent was entitled to $0.00 of those benefits during this time period.

8. Respondent received an OI in FAP benefits in the amount of $818.83.

9. This was Respondent's second IPV.

10. A notice of hearing was mailed to Respondent at the last known address and was 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 (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq*., and Mich Admin Code, R 400.3001 through R 400.3015.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (12/2011), p. 1

BAM 700 (12/2011), p. 1, defines trafficking as, "The buying or selling of FAP benefits for cash or consideration other than eligible food."

The Department presented clear and convincing evidence that Respondent sold FAP benefits for cash or consideration other than eligible food. Respondent, from March of 2012 through June of 2012, made food stamp purchases in amounts inconsistent with average purchase amounts found in similar stores in the same city in which Respondent made purchases. Each month during the fraud period, Respondent made several purchases in one day, each purchase being within minutes of other purchases, at the store that was given a civil money penalty due to trafficking. Respondent's purchase pattern with this store is consistent with the pattern of trafficking described in the federal investigation of the store.

It is logical to conclude that Respondent participated in trafficking of her FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program 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 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 Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits, and that this is Respondent's second IPV. Respondent is therefore disqualified from receiving FAP benefits for a period of two years.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1

For FAP, the OI amount for trafficking-related IPVs is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.

- Documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. This can be established through circumstantial evidence.

BAM 720, p. 7

In this case, the Department has satisfactorily shown that Respondent received an OI in the amount of $818.83 in FAP benefits. See Exhibit 1, p. 51.

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. Respondent committed an IPV.

2. Respondent received an OI of program benefits in the amount of $818.83 from the following program(s): FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of $818.83, in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of one year.

Susan C. Burke
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/12/2015**

Date Mailed: **1/12/2015**

SCB / hw

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]