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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-004711
Issue No.: 3005
Case No.: [redacted]
Hearing Date: November 17, 2014
County: MUSKEGON

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 November 17, 2014 from Detroit, Michigan. The Department was represented by [redacted] Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included Kimbreya Jones.

ISSUES

1. Did Respondent receive an overissuance (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) 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 June 26, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

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

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

4. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2012 through May 31, 2013.

5. During the alleged fraud period, Respondent was issued $[redacted] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $0 in such benefits during this time period.

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

7. This was Respondent's first alleged IPV.

8. A notice of hearing was mailed to 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 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.

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

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 their reporting responsibilities.

BAM 700 (2013), p. 6; 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.

The federal Food Stamp regulations read in part:

> (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
>
> (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
>
> (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
>
> (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is $1000 or more, or
- the total overissuance amount is less than $1000, and

    - the group has a previous intentional program violation, or
    - the alleged IPV involves FAP trafficking, or
    - the alleged fraud involves concurrent receipt of assistance,
    - the alleged fraud is committed by a state/government employee.

    BAM 720 (2013), p. 12.

A court or hearing decision that finds a client committed 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. 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 overissuance 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 (2013), 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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV**,** with regard to the FAP program. Thus, the Department must not only prove that the Respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that Respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing sufficient evidence that the Respondent had an overissuance that is the threshold issue when making a determination that an Intentional Program Violation exists.

The prerequisite for an IPV, client error, or agency error is proof of an actual overissuance of benefits. Even if the Department presents clear and convincing evidence that the Respondent intended to defraud the Department, without proof of an

actual overissuance, there can be no Intentional Program Violation and recoupment of benefits. The same standard holds for agency error and client error; there can be no error or recoupment without first proving, through clear and convincing evidence, the amount of that recoupment. As such, unless the Department first proves an overissuance, any evidence of intent to commit a program violation is irrelevant.

Therefore, the Department must first establish, by a preponderance of the evidence, that an overissuance occurred and the amount of that overissuance. Where the Department is unable to or fails to prove the amount of overissuance, no overissuance can be said to have occurred.

The Department alleges that the Respondent failed to report household members during the time period in question. At no point does the Department's evidence show whether or not these other household members were receiving FAP benefits.

The Department failed to present FAP recoupment budgets to support the alleged recoupment amount. While the Department alleges that Respondent was not entitled to FAP benefits at all for failing to report other household members, this is simply not true; the purpose of adding and placing members into an FAP group is to make a determination as to total household income. By not reporting the other group members, Respondent potentially failed to report these other household member's income, which could have had a negative effect on the amount of benefits Respondent was entitled to receive. See generally, BEM 500 series.

This would not always be the case however; adding group members also increases the maximum amount of FAP benefits that the group may potentially receive. If the additional group members had little or no income, Respondent may have potentially received **less** FAP benefits that she was entitled to. RFT 245.

Simply put, a misrepresentation does not automatically mean that a Respondent is not eligible for benefits at all; the purpose of recoupment budgets are to make a determination as to how much Respondent should have received, versus how much Respondent actually received. By failing to even run a recoupment budget, or make a determination as to the income of the other potential household members, the Department has failed to show that there was an actual overissuance.

It is the job of the Department to show, through sufficient evidence, the amount of the required recoupment, failing to submit recoupment budgets is unacceptable. If the Department believes a recoupment is proper, the Department should submit budgets that explain exactly how a recoupment is proper, with correct and verifiable numbers.

Even a clear act of fraud cannot give rise to a recoupment and IPV, if the Department did not issue any benefits that the Respondent was not entitled to. As such, if there is insufficient evidence submitted regarding the proper amount of recoupment, the Administrative Law Judge cannot sustain a recoupment and hold that an overissuance occurred.

For those reasons, the undersigned must hold that the Department has failed to prove through sufficient evidence the amount of the overissuance or whether recoupment is proper for the purposes of the FAP program.

The Administrative Law Judge acknowledges that when there is some attempted fraud, there could be some degree of benefit overissuance; this is not always the case, however. The Department must provide evidence to establish the overissuance and the amount of overissuance that it seeks to recoup. Without an overissuance, there can be no IPV, client error, or agency error.

Failure to fulfill this evidentiary requirement must therefore result in a finding of no error. Thus, the undersigned must hold that there is no clear and convincing evidence that the Respondent committed an Intentional Program Violation, and the Department has failed to prove a proper recoupment amount for the FAP program.

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:

1. Respondent did not commit an IPV by clear and convincing evidence.

2. Respondent did not receive an OI of program benefits in the amount of [redacted] in FAP benefits.

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

Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/27/2015**

Date Mailed: **2/27/2015**

RJC/tm

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]