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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-012418
Issue No.: 3005
Case No.: [redacted]
Hearing Date: January 29, 2015
County: WASHTENAW (DISTRICT 20)

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 29, 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 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 applied for FAP benefits on [redacted].

4. The Department alleged a fraud period of [redacted].

5. Respondent used his EBT card exclusively in [redacted] from [redacted].

6. Respondent received an OI in FAP benefits in the amount of $895.00.

7. A notice of hearing was mailed to Respondent at his last known address in [redacted] 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 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 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 (7/2013), p. 12 (See also BAM 720 (10/2014) for $500 criteria.)

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 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 Department alleged a fraud period of [redacted], in which Respondent failed to report a change of residence. However, although the Department stated in its hearing summary that Respondent submitted an application for assistance on [redacted], the Department did not submit, for review, this application. Instead, the Department submitted an application of [redacted] and a duplicate of the application of [redacted]. The Department therefore did not prove that Respondent was clearly and correctly instructed regarding his reporting responsibilities prior to the alleged fraud period.

Based on the above discussion, it is concluded that the Department did not establish by clear and convincing evidence that Respondent committed an IPV.

Disqualification
A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15

In this case, the Department has not established that Respondent committed an IPV. Therefore, Respondent is not disqualified from receiving FAP benefits.

Overissuance
When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 725 (7/2013), p. 1

BEM 220 (7/2013) instructs that to be eligible for assistance in Michigan, a person must be a Michigan resident. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely.

In the present case, the Department showed that Respondent used his EBT card exclusively in [redacted] from [redacted]. Respondent was employed in August of 2013 and September of 2013, and used an [redacted] employee address during that time. Respondent's Facebook page indicated that he resided in [redacted] as of [redacted]. It is logical to conclude that Respondent resided in [redacted] as of [redacted] (the beginning of the alleged fraud period).

In this case, Respondent received an OI in FAP benefits based on non-residency in the amount of $895.00, as sufficiently demonstrated by the Department (See Exhibit 1, p. 75 for calculation of the OI).

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. The Department has not established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent received an OI of FAP program benefits in the amount of $895.00

The Department is ORDERED to initiate recoupment procedures for the amount of $895.00, in accordance with Department policy.

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

Date Signed: **2/5/2015**

Date Mailed: **2/5/2015**

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]