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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 14-014276
Issue No.: 3005
Case No.: [redacted]
Hearing Date: January 08, 2015
County: WAYNE-DISTRICT 31

**ADMINISTRATIVE LAW JUDGE:** Susanne E. Harris

## 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 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 January 8, from Lansing, Michigan. The Department was represented by [redacted], Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear at the hearing and it was held in the 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 the Department establish, by clear and convincing evidence, that the Respondent committed an Intentional Program Violation (IPV) and must therefore be disqualified from Food Assistance Program (FAP)?

## 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 27, 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 and MA benefits issued by the Department.

4. On April 1, 2013, the Respondent's Authorized Representative completed and assistance application for FAP on behalf of the Respondent.

5. The Respondent began using FAP and MA benefits outside of the State of Michigan beginning in March, 2014.

6. The OIG indicates that the time period they are considering the fraud period is April 1, 2014 to June 30, 2014 for FAP and April 1, 2014 to July 31, 2014 for MA.

7. During the alleged fraud period, the Respondent was issued $[redacted] in FAP and MA benefits from the State of Michigan.

8. This was the Respondent's first alleged IPV.

9. 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 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 273. The Department (formerly known as the Family Independence Agency) 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 (2013), p.5.

**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 (2013), p. 7; 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 evidence is insufficient to establish that the Respondent was clearly and correctly instructed regarding his reporting responsibilities. The Respondent never did sign the DHS-1171, Assistance Application as his Authorized Representatives did so instead. Therefore, the Administrative Law Judge concludes that the Department did not establish, by a clear and convincing standard, that the Respondent was clearly and correctly instructed regarding his reporting responsibilities.

## 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 the Department has not established by clear and convincing evidence that the Respondent committed an IPV. As such, no disqualification is ordered.

Susanne E. Harris

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

Date Signed: **2/18/2015**

Date Mailed: **2/18/2015**

SEH/hj

**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]