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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-014372
Issue No.: 3005
Case No.: [redacted]
Hearing Date: March 16, 2015
County: MACOMB-DISTRICT 36

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 March 16, 2015, from Detroit, Michigan. The Department was represented by [redacted], 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's FAP benefits were used outside of the State of Michigan.

4. A notice of hearing was mailed to Respondent at her last known address in Washington Township, Michigan, 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.

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 (1/2011), 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 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.

As discussed below, the Department has not established an OI. Therefore, the Department has not established 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

In this case, the Department has not proven by clear and convincing evidence that Respondent committed an IPV, so Respondent is not disqualified from receiving benefits.

Overissuance
When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 725 (4/2011), p. 1

In the present case, the Department alleged two fraud periods, the first based on non-residency, and the second based on change of group size.

Alleged Fraud Period from [redacted], based on residency:

BEM 220 (4/2011) , p. 1, 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.

BEM 220 does not give a maximum time limit that a person may leave the state and lose residency in the State of Michigan for FAP. The simple act of leaving the state—even for an extended length of time—does not remove a person's residency status for the purposes of the FAP program. It is noted that the Department may cite BEM 212 (9/2010), regarding temporary absences, but BEM 212 addresses who must be included in FAP groups; it does not address residency. For instance, a person may leave a group, but still reside in Michigan. It is also noted that BEM 220, which does address residency, speaks to temporary absences only with regard to the Family Independence Program, State Disability Assistance program and Medical Assistance program.

The Department presented no evidence that Respondent was not a Michigan resident other than EBT usage in [redacted] from [redacted]. In addition, the notice for this hearing was mailed to Respondent at Respondent's Michigan address and it was not returned as undeliverable. Therefore, it is not concluded that Respondent was a non-resident of Michigan, and it is not concluded that Respondent received an OI based on non-residency.

Alleged Fraud Period from [redacted], based on change of group size:

For this alleged fraud period, the Department did not present an FAP EDG budget showing how it reached the alleged OI amount. The only OI calculation evidence is found at Exhibit A, p. 59, showing penciled-in figures. Without a more detailed budget, it cannot be concluded that the Department correctly calculated an OI, if any, based on change of group size.

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 did not receive an OI of program benefits.

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

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

Date Signed: **3/26/2015**

Date Mailed: **3/26/2015**

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]