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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-015488
Issue No.: 2000; 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 Amanda Bergquist, 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) and Medial Assistance (MA) benefits that the Department is entitled to recoup?

2. Did the Department prove 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 was a recipient of FAP benefits issued by the Department.

4. Respondent was aware of the responsibility to report that she no longer resided in Michigan.

5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

6. Respondent did not report that she no longer resided in Michigan.

7. Respondent continued to receive FAP benefits when she no longer resided in Michigan.

8. The Department's OIG indicates that the time period it is considering the fraud period is [redacted] through [redacted], [redacted] through [redacted] (fraud period).

9. Respondent received an OI of $1,956.00 in FAP benefits.

10. This was Respondent's first IPV.

11. A notice of hearing was mailed to Respondent at the last known address and it 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).

MA

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL

400.10, and MCL 400.105-.112k. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Department policy dictates that when correspondence to the Respondent is returned as undeliverable, the hearing cannot proceed, except as to FAP (BAM 720 (8/2012), pp. 9, 10). **ACCORDINGLY, the Request for an Intentional Program Violation Hearing regarding MA is Dismissed.**

FAP

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 , 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.

BEM 220 (1/1/2012), 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.

In this case, Respondent applied for FAP benefits on [redacted]. Official Notice is taken that with Respondent's signature on the assistance application, redetermination or semi-annual contact report, Respondent certified receipt, review and agreement with the sections in the assistance application Information Booklet, which include the obligation to report changes in one's circumstances. In addition, Respondent has no apparent physical or mental impairment that limits her understanding or ability to fulfill reporting responsibilities.

Respondent used her EBT card exclusively in [redacted] from [redacted] through [redacted] and [redacted] through [redacted]. In addition, Respondent obtained a [redacted] driver's license. It is logical to conclude that Respondent changed her residency from Michigan to [redacted] It is also logical to conclude that Respondent intentionally withheld information of her change of residency from Michigan for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Based on the above discussion, it is found that the Department has proven by clear and convincing evidence that Respondent committed 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

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 established that Respondent committed an IPV and that this is her first IPV. Therefore, Respondent is disqualified for a period of one year 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 (8/2012), p. 1

In this case, Respondent received Michigan benefits when she was not residing in Michigan. Therefore, Respondent received an OI in FAP benefits in the amount of $1,956.00 (see Exhibit A, pp. 84-86 for calculation of 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:

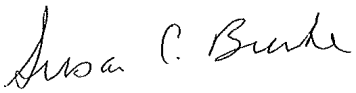
1. The Department has established by clear and convincing evidence that Respondent committed an IPV regarding FAP.

2. Respondent received an OI of FAP program benefits in the amount of $1,956.00.

The Department is ORDERED to initiate recoupment procedures for the amount of $1,956, in accordance with Department policy.

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

It is FURTEHR ORDERED the Request for an Intentional Program Violation Hearing regarding MA is Dismissed.



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

Date Signed: **3/27/2015**

Date Mailed: **3/27/2015**

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]