

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-010865
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: January 28, 2015
County: KENT-DISTRICT 1 (FRANKLIN)

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 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 28, 2015, 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

Did the Respondent committed an Intentional Program Violation (IPV) thereby receiving and over issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

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 September 10, 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 benefits issued by the Department.
4. The Respondent was aware of the responsibility to honestly report her circumstances to the Department.

5. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2011 to June 30, 2013 (fraud period).
7. During the fraud period, the Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that the Respondent was entitled to [REDACTED] in such benefits during this time period.
8. The Department alleges that the Respondent received an OI in benefits in the amount of [REDACTED]
9. This was the Respondent's first alleged IPV.
10. 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 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 (2011) p. 1.

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 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.

In this case, the Respondent acknowledged her responsibility to report all changes within 10 days on an Assistance Application dated December 9, 2008. At that time, the Respondent had one felony drug conviction on her record. The Respondent was again convicted of a felony drug charge in 2010 and again in 2012. The Respondent failed to report that she had two or more felony drug convictions on Assistance Applications dated March 24, 2011, January 3, 2012 and January 31, 2013. It was not until the

Respondent submitted an Assistance Application in April, 2013 that she reported that she had a felony drug conviction. Furthermore, on the Assistance Application that the Respondent completed in 2008 she reported that she had no drug-related felony, when at that time she did have one felony drug conviction. Therefore, this Administrative Law Judge concludes that the Respondent misrepresented information for the purpose of establishing and maintaining FAP benefits. As such, this Administrative Law Judge concludes that the Respondent has committed her first IPV.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and 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 OI relates to MA. BAM 720, p. 13. 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 Administrative Law Judge has concluded that the Respondent has committed her first IPV. As such, the Administrative Law Judge concludes that the appropriate disqualification period is one year.

Overissuance

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

In this case, the Respondents entire FAP issuance was based on her fraudulent statement made on the 2008 Assistance Application that she had no felony drug convictions after August, 1996, when she did indeed have one felony drug conviction in 2005. The Department policy changed on October 1, 2011, making a person with two or more felony drug convictions ineligible for FAP. Including the time in which the Claimant has to report changes in household circumstances, this Administrative Law Judge concludes that the Department properly determined the OI period to be December 1, 2011 to June 30, 2013. Therefore, all FAP benefits issued to the Respondent during the OI period constitutes the entire OI, as the Respondent was not eligible for any of the benefits. As such, the Administrative Law Judge concludes that the Department properly determined that the Respondent received, as a result of her IPV, an OI of [REDACTED] which the Department is entitled to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that the Department has met its burden of proving, by clear and convincing standard, that the Respondent committed and IPV and thereby received an OI which the Department is entitled to recoup. The Department is ordered to initiate recoupment procedures and impose a disqualification penalty in accordance with departmental policy.

Susanne E. Harris

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

Date Signed: **4/6/2015**

Date Mailed: **4/6/2015**

SEH/sw

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]