

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

IN THE MATTER OF:

██████████
██
████████████████████

Reg. No.: 14-018753
Issue No.: 3005; 3006
Case No.: ██████████
Hearing Date: April 23, 2015
County: WAYNE-DISTRICT 18
(TAYLOR)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 23, 2015, from Detroit, Michigan. The Department was represented by ██████████, 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 benefits for 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 December 26, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. Respondent was a recipient of FAP benefits issued by the Department.
3. Respondent was aware of the responsibility to report changes in residence.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicated that it no longer sought an IPV/disqualification against the Respondent because the OI amount sought is less than the \$500 threshold in which the Department's OIG requests IPV hearings.
6. The Department's OIG indicates that the amended time period it is considering the OI period is April 1, 2014 to April 30, 2014 (OI period).
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
8. A notice of hearing was mailed to 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 (May 2014), p. 7; 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 or CDC provider 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's original alleged fraud/OI period was February 1, 2014 to April 30, 2014 and alleged OI amount was [REDACTED]. See Exhibit 1, p. 3. However, during

the hearing, the Department amended the alleged OI period to be April 1, 2014 to April 30, 2014 and alleged OI amount was [REDACTED]. The Department's OIG indicated that it no longer sought an IPV/disqualification against the Respondent because the OI amount sought is less than the [REDACTED] threshold in which the Department's OIG requests IPV hearings. See BAM 720, pp. 12-13. Based on the above information, Respondent is not subject to an IPV disqualification from the FAP benefits. See BAM 720, pp. 12 – 13 and 16.

Nevertheless, the Department still alleges that Respondent received an OI in FAP benefits in the amount of \$189. 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 Department still sought recoupment of the OI based on client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1. However, policy states that no client overissuance will be established if the amount is less than [REDACTED]. BAM 715, p. 6. As stated above, the Department seeks an alleged client OI amount of [REDACTED] which is below the [REDACTED] threshold. See BAM 700, p. 9 and BAM 715, p. 6. Based on the above information, the Department cannot establish that the OI amount threshold is present in this case. Therefore, Respondent is not subject to an OI amount from the FAP program. See BAM 700, p. 9 and BAM 715, p. 6.

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 in the amount of [REDACTED] from the FAP benefits.

