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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 15-000160
Issue No.: 3005
Case No.: [redacted]
Hearing Date: April 2, 2015
County: Genesee (2) Mc Cree

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

## 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 April 2, 2015, from Lansing, Michigan. The Department was represented by [redacted], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

## 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 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 January 7, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has 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 changes in his income and employment.

5. 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 June 1, 2012, through August 31, 2012, (fraud period).

7. During the fraud period, Respondent was issued $[redacted] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $[redacted] in such benefits during this time period.

8. The Department alleges that Respondent received an OI in FAP benefits in the amount of $[redacted]

9. This was Respondent's first alleged IPV.

10. 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 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 (10/1/14), p. 14.

**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 (5/1/14), 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 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, Respondent began working on March 29, 2012. He was offered the job on March 28, 2012, and he accepted the job that day. He testified that he reported his employment to the Department, and brought in pay stubs. His case worker told him his benefits would be reduced because of his earnings. His circumstances changed further when he had to begin paying for his shelter expense after he found work. He reported his shelter expenses to the Department. His benefits remained the same, despite those changes. When his case was redetermined at a later date, his benefits were adjusted. He asked his worker why they were not adjusted when he originally reported the changes and her response was that she lost his pay stubs.

The Department's position is that Respondent did not report his employment and that he consequently received more in benefits than should have been received. In the budgets provided by the Department (Exhibit A Pages 23 et seq), Respondent was allowed a heat and utility standard but not any other shelter costs. Because shelter costs are incorporated into the adjusted FAP budgets, it is not possible to determine whether the Department properly calculated the OI for any of the three months in question. The burden is on the Department to prove by clear and convincing evidence that there was an IPV that resulted in an OI, and it must prove the amount of the OI. The Department has not met its burden here. Respondent has testified convincingly that he reported his wages to the Department at the time. The Department did not make adjustments to reflect that income at the time. In its attempt to make adjustments now, evidence was not provided that allow an accurate calculation of an OI.

**Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/13), p. 2. 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. 16.

In this case, because there is insufficient evidence that an IPV occurred, there will be no disqualification.

**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 Department has not met its burden of proving that an OI occurred.

## 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 FAP program.

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

It is FURTHER ORDERED that no disqualification period will be imposed.

**Darryl Johnson**
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/3/2015**

Date Mailed: **4/3/2015**

DJ/jaf

**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]