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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-002068
Issue No.: 3005
Case No.: [redacted]
Hearing Date: April 9, 2015
County: Calhoun

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on April 9, 2015, from Lansing, Michigan. The Department was represented by [redacted], 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 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 February 18, 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 signed an Assistance Application (DHS-1171) on August 7, 2012, and a Redetermination on July 1, 2013, acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him. (Dept. Ex A, pp 10-33, 34-37).

5. Respondent received $[redacted] in FAP benefits from the State of Michigan during the fraud period of February 1, 2013, through April 20, 2013. If Respondent had properly reported that he was working, Respondent would have been entitled to receive $[redacted] in FAP benefits. (Dept. Ex A, p 3).

6. Respondent received $[redacted] in FAP benefits from the State of Michigan during the fraud period of September 1, 2013, through March 31, 2014. If Respondent had properly reported that he was working, Respondent would have been entitled to receive $[redacted] in FAP benefits for the fraud period February 1, 2013, through April 30, 2013. (Dept. Ex A, p 3).

7. Respondent failed to report his employment in a timely manner, resulting in a FAP overissuance of $[redacted] for the fraud period of February 1, 2013, through April 30, 2013, and $[redacted] for the fraud period of September 1, 2013, through March 31, 2014.

8. Respondent was clearly instructed and fully aware of the responsibility to report all changes to the Department within 10 days.

9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

10. This was Respondent's first alleged IPV.

11. 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 $500 or more, **or**
  - the total OI 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, p 12 (10/1/2014).

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 (10/1/2014), 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 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.

The Department received verification from [redacted], dated March 19, 2014, showing Respondent was and had been employed since July 24, 2013. (Dept. Ex A, pp 48-51).

The Department received a verification of employment dated August 17, 2014, from [redacted] showing Respondent had been working at the company since October 1, 2012. (Dept. Ex A, pp 38-47).

By Respondent signing the August 7, 2012, Assistance Application and the July 1, 2013, Redetermination, Respondent acknowledged he was on notice that he must report all changes within 10 days of the change and that he could be prosecuted for fraud and be required to repay the amount wrongfully received. In this case, Respondent intentionally failed to notify or report his employment income to the Department resulting in a continuation of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an 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 16.

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 (7/1/2013), 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, this is Respondent's first IPV.

Overissuance

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

A Bridges FAP Issuance Summary from February 1, 2013, to April 30, 2013, showed Respondent received $[redacted] a month in FAP benefits. (Dept. Ex A, p 54). The summary supports Respondent was paid $[redacted] from February 1, 2013, to April 30, 2013. Had Respondent properly reported his income he would only have been eligible to receive $[redacted] in FAP benefits. Hence, he received an overissuance of $[redacted] in FAP benefits for the fraud period. The Summary of FAP benefits from September 1, 2013, through March 31, 2014, showed Respondent received $[redacted] a month for September and October of 2013, and $347 a month from November, 2013, through March, 2014. (Dept. Ex A, p 54). The Summary supports Respondent was paid $[redacted] from September 1, 2013, through March 31, 2014. If Respondent had properly reported his income he would only have been eligible to receive $[redacted] in FAP benefits. Therefore, he received an overissuance of $[redacted] in FAP benefits.

In this case, the Department has shown by clear and convincing evidence that Respondent received an overissuance of FAP benefits totaling $[redacted] ($[redacted] + $[redacted]). The overissuance was due to Respondent failing to timely report his employment income. According to BAM 700, the Department may recoup this overissuance.

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.

2. Respondent did receive an overissuance of FAP benefits in the amount of $[redacted]

The Department is ORDERED to initiate recoupment procedures for the amount of $[redacted] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/10/2015**

Date Mailed: **4/10/2015**

VLA/las

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]