

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-013562
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 21, 2015
County: Wayne-District 31 (Grandmont)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 21, 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 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 October 15, 2014, 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 not aware of the responsibility to timely report a changes in circumstances, including a change of address, to the Department.
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 March 1, 2012 through September 30, 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 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.

The Department's OIG requests IPV hearings for the following cases:

- 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 \$1,000 or more, or
- the total amount is less than \$1,000, 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 (12-1-2011), 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 700 (12-1-2011), p. 6; 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.

Here, the Department alleges that Respondent committed an IPV when he failed to timely and properly report to the Department a change of address in order to receive an OI of FAP benefits. Respondent did not attend the hearing.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The OIG failed to include a copy of the assistance application or other similar document into evidence. The Administrative Law Judge finds that, because the OIG did not offer into evidence any testimony or documentation signed by Respondent wherein he acknowledged the obligation to report changes in circumstances. The OIG also failed to establish with clear and convincing evidence that Respondent was clearly and correctly instructed regarding his reporting responsibilities. Similarly, the Department also fails to show that Respondent intentionally failed to report a change of residency. Consequently, the OIG has failed to establish that Respondent committed an intentional program violation with respect to the FAP program. This Administrative Law Judge further finds that, because the OIG failed to establish with clear and convincing evidence that Respondent intentionally failed to inform the Department of his change in residency for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

Disqualification

A client who is found to have committed a IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 12. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 14.

Here, because the Department has not shown that Respondent was guilty of his first IPV concerning FAP benefits, Respondent shall not be personally disqualified from receiving FAP benefits for a period of 1 year.

Overissuance

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

In this case, the Department has shown that Respondent received an OI of FAP benefits in the amount of [REDACTED]. The record shows that Respondent's Electronic Benefit Transfer (EBT) card was used in several states during the fraud period including but not limited to: Texas, West Virginia, Maine, Oklahoma, Alabama, Arizona, Pennsylvania, Maryland, Connecticut, Arkansas, North Dakota, Delaware, Georgia, South Carolina and Mississippi. (Exhibit 1, pp. 17-19) According to the IG-311 EBT History report, Respondent would have traveled across the United States in 2012 in order to have been responsible for all of the transactions alleged. For example, the IG-311 shows that on January 22, 2012 Respondent's EBT card was used in Texas and then, 4 days later, used in West Virginia. (Exhibit 1, p 16) This pattern of transactions appears on this record. (Exhibit 1, pp 17-19) While the IG-311 report appears to be shocking at first glance, a closer inspection reveals that it was entirely possible that Respondent conducted these transactions or, in the alternative, received the OI of FAP

benefits during the fraud period. This OI was due to client error as there is no evidence that Respondent timely and properly reported the change in residency.

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 receive an OI of program benefits in the amount of [REDACTED] from FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits arising out of this occurrence.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

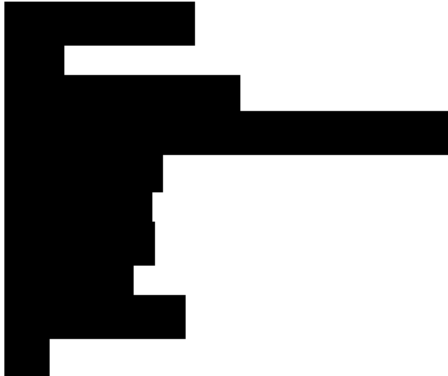
Date Signed: 04/30/2015

Date Mailed: 04/30/2015

CAP/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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

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