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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-002876
Issue No.: 3005
Case No.: [redacted]
Hearing Date: April 28, 2015
County: Wayne-District 18

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 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 28, 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 March 5, 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 April 12, 2012, acknowledging that she understood her failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against her. (Dept. Ex A, pp 11-34).

5. Respondent received $[redacted] in FAP benefits from the State of Michigan during the fraud period of July 1, 2012, through March 31, 2013. If Respondent had properly reported that she had moved to Kentucky, Respondent would have been entitled to receive $0 in FAP. (Dept. Ex A, pp 44-46).

6. During the period of May 12, 2012, through March 20, 2013, Respondent was living in Kentucky and used her Michigan FAP benefits solely in Kentucky, according to the FAP Purchase History. (Dept. Ex A, pp 40-43).

7. Respondent failed to report her move to Kentucky in a timely manner, resulting in a FAP overissuance of $[redacted] for the fraud period of July 1, 2012, through March 31, 2013. (Dept. Ex A, pp 40-43, 44-46).

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

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

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

11. This was Respondent's second alleged IPV. (Dept. Ex A, p 49).

12. A notice of hearing was mailed to Respondent at the last known address and was returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

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.

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 following are the relevant policy statements and instructions Department caseworkers follow.

As an initial matter, the notice of hearing, hearing summary, Intentional Program Violation Repayment Agreement, Investigative Report and documentary evidence were mailed to Respondent at the last known address of: [redacted] The mail was returned by the United States Postal Service as "return to sender, unable to forward."

Department policy indicates that when correspondence to the client is returned as undeliverable only FAP intentional program violation hearings will be pursued. BAM 720, 5/1/2014, p 12.

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.

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 second IPV.

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.

Respondent applied for Michigan FAP benefits on April 12, 2012. It is well settled that a person *cannot* receive FAP in Michigan unless they are a resident of Michigan. BEM 220, p 1 (7/1/2014). Moreover, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BAM 105, p 11 (1/1/2015).

By signing the aforementioned application, Respondent acknowledged she was aware she could be prosecuted for fraud and be required to repay the amount wrongfully received and that she must report all changes within 10 days of the change.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The FAP Purchase History from May 12, 2012, through March 20, 2013, shows Respondent used her Michigan FAP benefits exclusively in Kentucky. (Dept. Ex A, pp 40-43).

The FAP Benefit Summary shows Respondent received $[redacted] a month from July, 2012, through March, 2013. (Dept. Ex A, pp 44-46). The summary supports that Respondent was paid a total of $[redacted] in FAP benefits. Had Respondent properly reported her move to Kentucky she would have been eligible to receive $0. Hence, she received an overissuance of $[redacted] in FAP benefits for the time period of July 1, 2012, through March 31, 2013.

Here, the OIG provided credible testimony and other evidence demonstrating that Respondent, during the period of May 12, 2012, through March 20, 2013, was residing in the State of Kentucky and used Michigan FAP benefits solely in Kentucky.

As a result, the Department has shown by clear and convincing evidence that Respondent received an OI of benefits. The OI was due to Respondent failing to timely report her move to Kentucky. According to BAM 700, the Department may recoup this OI.

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 OI 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 24 months.

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

Date Signed: **5/4/2015**

Date Mailed: **5/4/2015**

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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: [redacted]