

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

**IN THE MATTER OF:**



Reg. No.: 15-004195  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: May 28, 2015  
County: ST. JOSEPH

**ADMINISTRATIVE LAW JUDGE:** Susanne E. Harris

**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 May 28, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of the Respondent included the Respondent, [REDACTED].

**ISSUES**

Did the Respondent commit an Intentional Program Violation (IPV) and thereby receive an over issuance (OI) of the Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

**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 30, 2015, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV.
2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. The Respondent was a recipient of FAP benefits issued by the Department.
4. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill reporting requirements.
5. The Department's OIG indicates that the time period it is considering the OI period is December 1, 2013 to June 30, 2014.

6. During the OI period, the Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that the Respondent was entitled to [REDACTED] in such benefits during this time period.
7. The Department alleges that the Respondent received an OI in FAP benefits in the amount of [REDACTED]
8. This was the Respondent's first alleged IPV.
9. A notice of hearing was mailed to the 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:

- 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 \$1000 or more, or
  - the total 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 (2013), 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 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, the Assistance Application in evidence does not contain the rights and responsibilities section that it refers to. The Respondent testified that he is new at obtaining public assistance and when asked if anyone in his home had income, he thought he was being asked about anyone else in his home but himself. The Respondent testified that he was sorry for his mistake but that he did not intend to commit fraud.

Indeed, the evidence does not contain the actual portion of the electronic assistance application which asks the Respondent if he has earned income. What are shown on the electronic assistance application are the words, "Job Income Information" and under those words, "You told us that on one in your home has this kind of income, benefit, or bill." These are the words the Respondent testified he misunderstood. The Respondent testified that he thought he was being asked about anyone in his home but himself.

In this case, the Administrative Law Judge does not have the benefit of seeing the actual electronic assistance application when it poses the question at issue to the Respondent. Furthermore, the Assistance Application in evidence does not contain the rights and responsibilities section which would inform the Respondent of his reporting responsibilities. Lastly, the Respondent attended the hearing and testified that he misunderstood the application and that his actions were not intentional. As such, this Administrative Law Judge concludes that the evidence is insufficient to establish that the Respondent's actions were intentional. Therefore, this Administrative Law Judge concludes that the Department has not met its burden of establishing that the Respondent committed an IPV.

### **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, though the Department has not met its burden of proving that the Respondent's actions were intentional, the Respondent did concede that he made a mistake. Furthermore, the evidence establishes that the Respondent did receive an OI of \$1700 in FAP benefits that the Department is entitled to recoup.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the Department has not established by clear and convincing evidence that the Respondent committed an IPV. No disqualification period is therefore ordered. The Respondent did receive an OI of [REDACTED] of FAP benefits. The Department is ORDERED to initiate recoupment/collection procedures in accordance with Department policy.



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Susanne E. Harris  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **5/29/2015**

Date Mailed: **5/29/2015**

SEH/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:

