

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

IN THE MATTER OF:



Reg. No.: 14-011163
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: June 09, 2015
County: WAYNE-DISTRICT 18 (TAYLOR)

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 June 9, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear at the hearing and it was held in the 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

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 September 17, 2014, 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 asserted, during an interview with the Regulation Agent, that he was not aware of the proper and improper use of his EBT card.
5. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability that would impair his understanding of program rules.
6. On August 1, 2013, the Respondent posted on Craigslist, quote "Bridge card (first come first serve)" Got a bridge card I have [REDACTED] I need [REDACTED]
7. The Department's OIG indicates that the time period it is considering the OI period is August 4, 2014 to August 31, 2014.
8. 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.
9. The Department alleges that the Respondent received an OI in FAP benefits in the amount of [REDACTED]
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 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.

BAM 720 is vague with regard to the evidentiary requirements to establish an Intentional Program Violation (IPV). 7 CFR 273.16(e)(6) specifically identifies the requirement of clear and convincing evidence which shows a Respondent "committed, and intended to commit" either of the two types of Intentional Program Violation (IPV) defined in 7 CFR 273.16(c).

DHS Publication 1010 is the information booklet which an applicant is required to read before signing an assistance application. When an applicant signs the assistance application, they are verifying that they have been provided with all the information contained in Publication 1010. Page 12 of Publication 1010 is Penalties, Intentional Program Violation of Fraud (FAP, FIP, SDA, CDC).

In this case, the Respondent told the Regulation Agent, when he was interviewed, that he did not know that selling his FAP benefits for cash was against the rules. Supportive of the Respondent's testimony is the fact that he brazenly advertised his EBT card on Craigslist. Had the Respondent known that his actions were a violation of program rules he likely would have been a bit more surreptitious in his efforts to sell his EBT card. Lastly, there is no assistance application in evidence to establish that the Respondent was aware of program rules. Therefore, the Administrative Law Judge concludes that the evidence is insufficient to establish that the Respondent's actions were an intentional violation of program rules.

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 Respondent committed an IPV. Therefore, the Department's actions are **NOT UPHELD**.



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

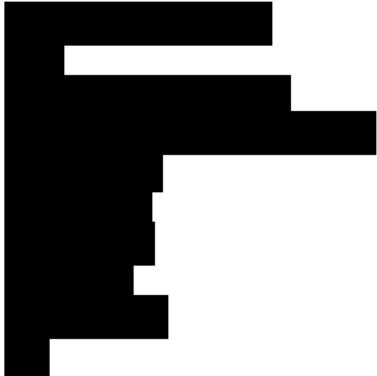
Date Signed: **6/9/2015**

Date Mailed: **6/9/2015**

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:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.