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

#### IN THE MATTER OF:



Reg. No.: 15-002108

Issue No.: 3005

Case No.:
Hearing Date: June 10, 2015

County: Genesee-(2) (Mc Cree)

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

## HEARING DECISION FOR CONCURRENT BENEFITS 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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on June 10, 2015, from Lansing, Michigan. The Department was represented by 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).

### <u>ISSUES</u>

- 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)?
- Should Respondent be disqualified from receiving FAP?

#### FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

 The Department's OIG filed a hearing request on February 20, 215 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.

- 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. On the Assistance Application signed by Respondent on June 1, 2013, Respondent reported that she intended to stay in Michigan.
- 5. Respondent was aware of the responsibility to report changes in her residence to the Department.
- 6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
- 7. Respondent began using FAP benefits outside of the State of Michigan beginning December 11, 2013.
- 8. The OIG indicates that the time period they are considering the fraud period is January 1, 2014, through June 30, 2014.
- 9. During the alleged fraud period, Respondent was issued \$ in FAP benefits from the State of Michigan.
- 10. During the alleged fraud period, Respondent was issued FAP benefits from the State of
- 11. This was Respondent's first alleged IPV.
- 12. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking Ols 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 \$500 or more, or
  - the total 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 (10/1/14), p. 12.

#### **Intentional Program Violation**

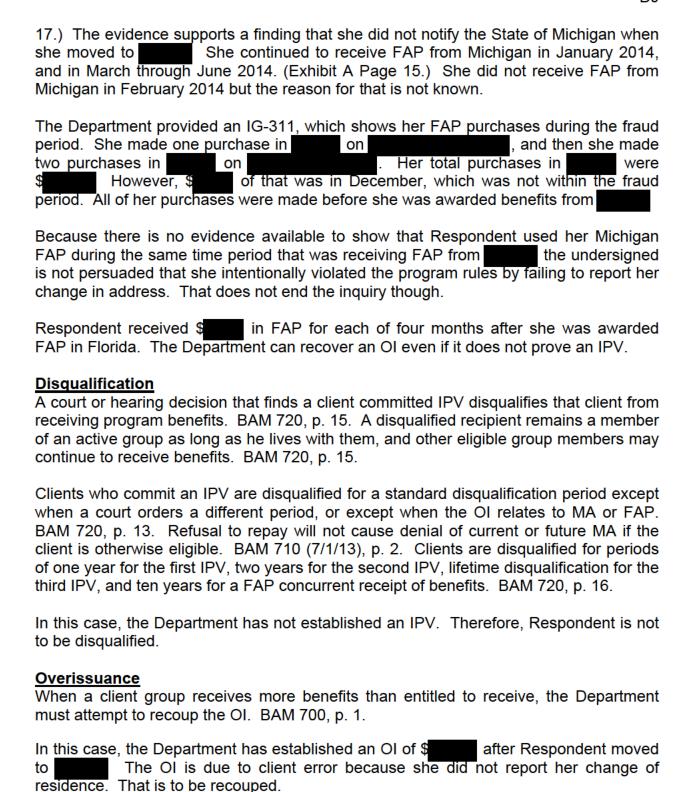
Suspected IPV means an OI exists for which all three of the following conditions exist:

- 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 (5/1/14), p. 6; BAM 720, p. 12.

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; 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, Respondent was receiving FAP in Michigan. She moved to and was approved for equivalent of FAP as of 2014. (Exhibit A Page



#### **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, 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 FAP benefits in the amount of \$

The Department is ORDERED to reduce the OI to \$ for the period of January 1, 2014, through June 30, 2014, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that

Respondent is not subject to disqualification from participation in the FAP program.

Darryl/Johnson

Administrative Law Judge for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: 6/10/2015

DJ/jaf

**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).

