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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-004382
Issue No.: 3005
Case No.: [redacted]
Hearing Date: May 28, 2015
County: Oakland (4) North Saginaw

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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).

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 March 27, 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 was aware of the responsibilities to cooperate with the local office in determining initial and ongoing eligibility; completely and truthfully answer all questions on forms and in interviews; and timely and accurately report to the Department all household changes that may affect eligibility.

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, 2013, through January 31, 2015, (fraud period).

7. During the fraud period, the Department alleges that Respondent was issued $[redacted] in FAP benefits by the State of Michigan, and 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.

Effective October 1, 2014, 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 $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 (October 1, 2014), pp. 12-13**.**

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 (May 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.

In this case, the Department has established that Respondent was aware of his reporting responsibilities. Department policy requires clients cooperate with the local office in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. Department policy also requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105, November 1, 2012, pp. 5-7. Respondent's signature on the February 28, 2013, Assistance Application in

this record certifies that he was aware of the reporting responsibilities and that fraudulent participation in benefits could result in criminal, civil or administrative claims. In addition, Respondent had no apparent physical or mental impairment that limited his understanding or ability to fulfill the reporting responsibilities.

The Department submitted documentation that Respondent had drug related felony convictions with sentence dates of [redacted]; [redacted]; and [redacted]. The offence dates were [redacted]; [redacted]; and [redacted]. Further, the Department confirmed that for the [redacted], Felony Prisoner Possessing Contraband conviction, the contraband was marijuana. Pursuant to BEM 203, [redacted], p. 2, an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after [redacted]. Accordingly, Respondent was ineligible for FAP due to his multiple drug related felony convictions that occurred in separate periods.

On the February 28, 2013, Assistance Application, Respondent marked "yes" to the question asking if anyone in the household has been convicted of a drug-related felony occurring after August 22, 1996. However, Respondent marked "no" to the related question asking if there was more than one conviction.

The investigation report documents an interview with Respondent in which Respondent asserted that the [redacted], Felony Prisoner Possessing Contraband conviction did not count because he was already in prison. This assertion is incorrect. There is no exception for convictions based on acts committed while an individual is incarcerated. Further, Respondent had two prior drug related felony convictions, with sentencing dates [redacted], and [redacted], for offences committed [redacted], and [redacted].

Overall, the evidence establishes that the Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Accordingly, the Department has established that the Respondent committed a FAP IPV by clear and convincing evidence.

Disqualification

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 16. 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.

In this case, the evidence of record shows that Respondent committed a FAP IPV; therefore, he is subject to disqualification.

Overissuance

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

During the fraud period, the Department alleges that Respondent was issued $[redacted] in FAP benefits by the State of Michigan, and was entitled to $[redacted] in such benefits during this time period. Therefore, the Department alleges that Respondent received an OI in FAP benefits in the amount of $[redacted]

However, the FAP eligibility summaries in the record only document issuance of $[redacted] in FAP benefits to Respondent. Department Exhibit A, pp. 37 and 40. Therefore, the OI must be reduced to $[redacted]

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 program benefits in the amount of $[redacted] from the FAP program.

The Department is ORDERED to reduce the OI to $[redacted] for the fraud period, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP in accordance with Department policy.

Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/8/2015**

Date Mailed: **6/8/2015**

CL / 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).

cc: [redacted]