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

IN THE MATTER OF:

MAHS Reg. No.: 15-006117 Issue No.: 3005

Agency Case No.:

Hearing Date: July 30, 2015

County: Wayne (35-Redford)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

# 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 July 30, 2015, from Detroit, Michigan. The Department was represented by

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 12 months?

#### 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 April 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 responsibility to utilize her Michigan-issued FAP benefits for the purchase of eligible food items only.
- 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 April 4, 2011, through January 31, 2012 (fraud period).
- 7. During the fraud period, Respondent was issued \$134 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
- 8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$134.
- 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:

- 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 \$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 2014), 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 (May 2014), p. 7; BAM 720, p. 2.

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's case rests solely on the USDA's removal of the license to accept Supplemental Nutritional Assistance Program (SNAP) or FAP, the small size of the store, the items available for sale in the store and two purchases made by Respondent within a period of nine months.

This Administrative Law Judge finds that the evidence presented does not rise to the level of clear and convincing that Respondent was involved in the trafficking of FAP benefits.

# **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 not** established by clear and convincing evidence that Respondent committed an IPV.
- 2. Respondent **did not** receive an FAP OI in the amount of \$134.

The Department is ORDERED to delete the OI and cease any recoupment action.

Michael J. Bennane
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: 10/20/2015

Date Mailed: 10/20/2015

MJB / pf

**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).

