

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

IN THE MATTER OF:



Reg. No.: 15-013468
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 14, 2015
County: EATON

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 October 14, 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 July 29, 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 was aware of the responsibility to report all changes in household circumstances to the Department, within 10 days of the changes.

5. The 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 OI period is December 1, 2012 to May 31, 2013.
7. 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.
8. The Department alleges that the Respondent received an OI in FAP benefits in the amount of [REDACTED].
9. This was the Respondent's first alleged IPV.
10. 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.
11. The OIG Agent testified that the Respondent has already signed a Voluntary Client Error Repay Agreement and that the OI is already been recouped. The process is started by the Recoupment Specialist and then the case is forwarded to the OIG Agent to determine whether or not an IPV occurred.

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.

Bridges Administrative Manual (BAM) 700 (2015) pp. 11, 12, provides that the Recoupment Specialist (RS), within **60** days of receiving the referral, must determine if an overissuance actually occurred, and what type of over issuance it is. Within **90** days of determining an OI occurred, the RS must obtain all evidence needed to establish an overissuance and calculate the amount of the OI. The RS is to send the Claimant a DHS-4358-A, Notice of OI; a DHS-4358-B, OI Summary; a DHS-4358-C, Department and Client Error Information and Repayment Agreement and a DHS 4358-D, Hearing Request for OI or Recoupment Action. If the Claimant does not request a hearing, the Department proceeds to recoup/collect the debt on agency, client and suspected IPV errors as client errors. The RS is to refer all suspected IPV to OIG for investigation.

BAM 700 (2009) provides that there are three different types of OIs; client error, agency error and Intentional Program Violation. It provides that the Department should use prudent judgement in evaluating an OI for suspected IPV. The Department is to consider the following questions when reviewing the case:

- Does the record show that department staff advised the client of their rights and responsibilities?
- Does the record show the client's acknowledgment of these rights and responsibilities?
- Did the client neglect to report timely when required to do so?
- Did the client make false or misleading statements?
- Does the client error meet suspected IPV criteria?
- Does the OI amount meet the OIG threshold found in BAM 720?

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 \$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 (2012), 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 Administrative Law Judge concludes that that any OI that the Respondent received has already been established as a client error OI and collection proceedings have already been initiated. Having thoroughly reviewed the policy, this Administrative Law Judge could find no policy that permits the Department to pursue an IPV when it has already been determined that the Respondent has received an OI due to client error. Indeed, BAM 700, p. 4, specifically states that there are three different types of OIs. Nothing in the policy provides that once an OI has been established as one type, the Department is also permitted to then pursue and classify that same OI as a different, more severe type of OI that is accompanied with a disqualification penalty. This smacks of patent unfairness, particularly in this case as the Respondent has already signed a Repayment Agreement. This Administrative Law Judge concludes that there is no hearable issue here as the facts have already been decided and the Department is barred from bringing this action. This Department's actions are **NOT UPEHLD**.



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

Date Signed: **10/16/2015**

Date Mailed: **10/16/2015**

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:

