

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

IN THE MATTER OF:



MAHS Reg. No.: 15-014650
Issue No.: 3005
Agency Case No.: [REDACTED]
Hearing Date: October 28, 2015
County: SAGINAW

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 28, 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 August 3, 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 Department's OIG indicates that the time period it is considering the OI period is September 1, 2011 to December 31, 2011.
5. 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.
6. The Department alleges that the Respondent received an OI in FAP benefits in the amount of [REDACTED].
7. This was the Respondent's first alleged IPV.
8. 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.

CONCLUSIONS OF LAW

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.

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 should be used in evaluating an OI for suspected IPV. 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?

In this case, the Department's testimony was that it has already been decided that the OI the Respondent received was due to the Respondent's error and the Department has already recouped some of the OI. That process began before the IPV disqualification hearing was held. 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 or agency error. This Administrative Law Judge concludes that there is no

hearable issue as the facts have already been decided and the Department is barred from bringing this action. The Department's actions are therefore **NOT UPHELD**.

Susanne E. Harris


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

Date Mailed: **10/29/2015**

SEH/sw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

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