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

IN THE MATTER OF:

[redacted]

MAHS Reg. No.: 15-013091
Issue No.: 3000
Agency Case No.: [redacted]
Hearing Date: October 29, 2015
County: ISABELLA

ADMINISTRATIVE LAW JUDGE: [redacted]

AMENDED HEARING DECISION

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 September 30, 2015, from Lansing, Michigan. The Department was represented by [redacted] of the Office of Inspector General (OIG). The Respondent, [redacted], appeared and testified on his behalf during the first part of this hearing.

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge [redacted] and mailed on November 17, 2015 which is hereby **AMENDED** to correct that the decision was DISMISSED, as opposed to NOT UPEHLD.

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. In October of 2013, The Department received information from Wisconsin indicating that the Respondent possibly received concurrent FAP benefits from Wisconsin and Michigan.

2. The Department's OIG filed a hearing request on July 16, 2015 to establish an OI of benefits received by the Respondent as a result of the Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.

3. The OIG has requested that the Respondent be disqualified from receiving program benefits.

4. The Respondent was a recipient of FAP benefits issued by the Department.

5. The Respondent was aware of the responsibility to report changes in his residence to the Department.

6. The OIG indicates that the time period they are considering the OI period is May 1, 2013 to October 31, 2013.

7. The Respondent failed to report that he was receiving FAP benefits from the state of Wisconsin during the alleged OI period.

8. During the alleged OI period, the Respondent was issued $[redacted] in FAP benefits from the State of Michigan.

9. During the alleged OI period, the Respondent was issued FAP benefits from the State of Wisconsin.

10. This was the Respondent's first alleged IPV.

11. 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.

PROCEDURAL HISTORY

On September 8, 2015, the Michigan Administrative Hearing system received the Respondent's request for adjournment of the hearing. The Respondent stated that he had not received a hearing packet. The Respondent indicated it would be at least until September 11, 2015 before he would receive the packet and indicated that he understood that the hearing had to do with "some overlap from my Wisconsin Share." On September 17, 2015, the Respondent's request for adjournment was denied. The hearing convened as scheduled on September 30, 2015.

During the hearing, the Respondent renewed his request for an adjournment. The Respondent indicated that, during the alleged OI period, he was seriously ill and his cousin was caring for him. His cousin also had an EBT card on his FAP case and likely used the card to care for the Respondent. The Respondent requested an adjournment so that his cousin, [redacted], could testify as to whether or not he used the Respondent's EBT card while the Respondent was ill. As such, on September 30, 2015, this Administrative Law Judge issued an Order for Continuance and the hearing was continued until October 29, 2015 so that the testimony of [redacted] could be obtained.

The Respondent failed to appear for the continuance of the hearing on October 29, 2015. Indeed, the Administrative Law Judge did also telephone the Respondent and left a message to telephone the Michigan Administrative Hearing System within one half hour of the message, if he wished to continue with the hearing. The Respondent did not

call. The Administrative Law Judge concluded that the Respondent failed to appear for the continuance of the hearing and the hearing proceeded in his absence.

During the remainder of the hearing, the OIG Agent testified that new information had been obtained regarding the Claimant's Wisconsin FAP case. The Claimant had no authorized representative on his Wisconsin FAP case. Indeed, the Respondent had reported to Wisconsin that he split his rent with his roommate, Michael Banas, and that they each bought and prepared foods separately. No information was provided as to the Respondent's claim that he was seriously ill during the alleged OI period.

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.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 $[redacted] or more, or

  - the total amount is less than $[redacted] 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 (2012), 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.

When a potential over issuance is discovered, the Department's Case Worker is to refer the OI to the Recoupment Specialist within 60 days of suspecting its existence. BAM 700 p. 10. Within 60 days of receiving the referral, the Recoupment Specialist must determine if an OI actually occurred and what type of OI it is. The Recoupment Specialist, within 90 days, must refer all suspected IPV OIs to the OIG. BAM 720 (2014) p. 4. The OIG then has 12 months to refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System. BAM 720 p. 12. These policies evidence the Department's intent to process OIs and suspected IPV's expeditiously.

In this case, the OIG reports that it received a referral from Wisconsin on November 26, 2013. Yet the evidence contains an email from a Wisconsin worker indicating that information regarding this potential IPV was sent to Michigan in October, 2013. Regardless, the OIG did not refer this suspected IPV case to the Michigan Administrative Hearing System until July 16, 2015.

Clearly, the Department has not met the timelines specified for action within the departmental policy. Furthermore, the Respondent was prejudiced by this delay and even testified that he was sick and had difficulty remembering the time period of the alleged IPV. Lastly, the Department had all of the information regarding the alleged IPV in October of 2013 but the OIG had to request that it be re-sent, which it was, in June of 2015. The Administrative Law Judge concludes that such delay is unreasonable and most likely avoidable as well. As such, the Department was not acting in accordance with its policy when bringing the alleged IPV.

In this case, the Administrative Law Judge has concluded that the Department has not referred the matter to the Michigan Administrative Hearing System within the requisite time and therefore, the Department's request for hearing is **DISMISSED**.

Susanne E. Harris

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

Date Mailed: **11/18/2015**

SEH / nr

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: [redacted]