

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-014763
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 07, 2015
County: CALHOUN (DISTRICT 21)

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 7, 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 6, 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 December 1, 2009 to October 31, 2012.
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.
9. While off the record, the OIG Agent indicated that some cases presented to the Administrative Law Judge had been referred from the Department's Recoupment Specialist who had already determined that the OI at issue was a client error and recoupment/collection procedures had already been initiated. As such, this Administrative Law Judge consulted the Michigan Administrative Hearing System administrative staff who then reported that the Respondent's OI has already been determined to be a client error and recoupment/collection procedures have already begun in the Respondent's case.

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.

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 (2009), 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.

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 Administrative Law Judge concludes that the Department has already decided that the OI the Respondent received was due to the Respondent's error and the Department can recoup/collect the OI. That determination occurred well before the Department requested the current IPV hearing. 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. 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. The Department's actions are therefore **NOT UPHELD**.



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

Date Mailed: **11/3/2015**

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:

