

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001789
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 01, 2015
County: KALAMAZOO

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on April 1, 2015, from Lansing, Michigan. The Department was represented by Regulation Agent, [REDACTED] 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 overissuance (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 February 11, 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.
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 Assistance Application in evidence is not signed by the Respondent. The evidence includes a two-page expedited FAP application signed by the Respondent. On the Assistance Application, the Respondent reported that she intended to stay in Michigan.
5. If the Respondent was aware of the responsibility to report changes in her residence to the Department, it is not evidenced by her signature on the Assistance Application. However, the Respondent did complete an Assistance Application for expedited FAP affirming under the penalty of perjury that she was telling the truth, but not acknowledging her responsibility to report changes in household circumstances to the Department within 10 days.
6. The Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill the reporting requirement.
7. The Respondent began using FAP benefits outside of the State of Michigan beginning in April, 2013.
8. The OIG indicates that the time period they are considering the fraud period is July 1, 2013 to September 30, 2013.
9. During the alleged fraud period, the Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, the Respondent was issued FAP benefits from the State of Iowa.
11. This was the Respondent's first alleged IPV.
12. 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

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, 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 Family Independence Agency) 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, **or**
 - the total OI 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 (2013), 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 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 evidence contains no written acknowledgment from the Respondent that the Respondent understood her responsibility to report all changes in household circumstances to the Department within 10 days. As such, the evidence is insufficient to establish that the Respondent intentionally withheld information for the purpose of maintaining program benefits. Therefore, this Administrative Law Judge determines that the Department has not met its burden of proving, by a clear and convincing standard, that the Respondent committed an IPV.

Because the Department does not meet its burden of proving that the Respondent committed an IPV, and because the Respondent was never made to sign the Assistance Application, the evidence is now not clear as to whether or not any OI that exists is an agency or a client error. The calculation for an OI differs depending on whether or not it is an agency or client error. Therefore, no determination regarding an OI is made in this decision.

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, concludes that the Department has not established by clear and convincing evidence that the Respondent committed an IPV.



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

Date Signed: **4/2/2015**

Date Mailed: **4/2/2015**

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.

cc:

