

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-004563
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: May 12, 2015
County: WAYNE-DISTRICT 15

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

**HEARING DECISION FOR CONCURRENT BENEFITS
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 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 three-way, telephone hearing was held on May 12, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of the Respondent included the Respondent, [REDACTED].

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 March 31, 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. On the Assistance Application signed by the Respondent on April 26, 2013, the Respondent acknowledged that she had read and understood her rights and

responsibilities and understood her responsibility to truthfully report her circumstances. On this Assistance Application, the Respondent was asked if she had a bridge card and was getting FAP benefits this month and the Respondent answered yes. Later, on the Assistance Application the Respondent fails to answer questions regarding whether she has moved from another state or the date she received assistance from another state.

5. The Respondent testified that she could not see well and did not understand things well and thereby asserted that she had a physical and mental impairment that would limit the understanding or ability to fulfill the reporting requirement. The Respondent reported on her Assistance Application that she was disabled.
6. The Respondent used FAP benefits concurrently in the State states of Michigan and Missouri beginning June 4, 2013.
7. The OIG indicates that the time period they are considering the OI period is April 1, 2013 to March 30, 2014.
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 Missouri.
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.

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 \$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 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 Respondent reported on her Assistance Application that she suffered from a disability. The Administrative Law Judge concludes that the Respondent reported that she would be currently receiving food stamps the month in which she submitted her application. The Respondent did not answer whether she moved from another state or had received assistance from another state. When the Respondent was asked about this during the hearing, the Respondent testified that she doesn't understand things very well and cannot read and has somebody help her with the forms. The Regulation Agent could not testify with any personal knowledge as to a disability asserted by the Respondent.

In this case, the Administrative Law Judge concludes that the Department fails to meet its burden, by a clear and convincing standard, of establishing that the Respondent was cognizant of her rights and responsibilities as a recipient of the FAP program. As such, the Department fails to establish that any violation that may have occurred is intentional. Furthermore, the Administrative Law Judge is not persuaded that the OI period and amount have been properly calculated.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the Department has failed to meet its burden of proving that the Respondent committed and IPV.

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 Signed: **5/26/2015**

Date Mailed: **5/26/2015**

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:

