

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

IN THE MATTER OF:



MAHS Reg. No.: 15-006430
Issue No.: 3005, 4005
Agency Case No.: [REDACTED]
Hearing Date: September 15, 2015
County: Wayne (76) Gratiot/7 Mile

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 telephone hearing was held on September 15, 2015, from Lansing, Michigan. The Department was represented by [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 over issuance (OI) of the Food Assistance Program (FAP) and State Disability Assistance (SDA) 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 April 30, 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 and SDA benefits issued by the Department.
4. On the assistance application dated May 13, 2012, the Respondent reported that he had a disability. The OIG Agent could not testify as to what the disability was

or whether or not the disability would limit the understanding or ability to fulfill the Respondent's reporting requirements.

5. The Respondent began using FAP benefits outside of the State of Michigan beginning in July 2012.
6. The OIG indicates that the time period they are considering the OI period for FAP is September 1, 2012, to March 31, 2013.
7. The OIG indicates that the time period they are considering the OI period for SDA is September 1, 2012, to April 15, 2013.
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 \$ [REDACTED] in SDA benefits from the State of Michigan.
10. During the alleged OI period, the Respondent was issued \$ [REDACTED] benefits from the State of Michigan.
11. This was Respondent's first alleged IPV.
12. A notice of hearing was mailed to the Respondent at the last known address and was 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).

Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualification Hearing and accompanying documents that were mailed to Respondent at the last known address, and which constituted due notice, were returned to the Michigan Administrative Hearing System (MAHS) by the United States Postal Service as undeliverable.

Department policy dictates that when correspondence to a Respondent concerning an Intentional Program Violation (IPV) is returned as undeliverable, the hearing cannot proceed except with respect to the Food Assistance Program (FAP). Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (2012), p. 10. Because the hearing concerned SDA benefits, that portion of the hearing cannot proceed.

Therefore, the request for a disqualification hearing regarding SDA is **DISMISSED**.

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 \$1,000 or more, or
 - the total amount is less than \$1,000, 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. 2012.

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.

The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing the conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW 2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010). Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of

the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. Id.

In this case, the Respondent reported that he was suffering from a disability and that he was awaiting a decision from the Social Security Administration. The OIG Agent at the hearing could not testify as to the disability or whether or not the disability would affect the Respondent's ability to fulfill the reporting requirements. As such, the evidence is insufficient, by a clear and convincing standard, to establish that the Respondent's failure to report was intentional. Therefore, this Administrative Law Judge concludes that the evidence is insufficient to establish that the Respondent committed an IPV.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for an FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, no IPV has been established. Therefore, no disqualification penalty is appropriate.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2012), p. 1. In this case, the SDA portion of the hearing has been dismissed. No IPV was found. As such, no recoupment/collection is ordered.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the Department has not established by clear and convincing evidence that the Respondent committed an IPV. Therefore, no disqualification penalty is imposed.



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

Date Mailed: **9/17/2015**

SEH/jaf

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:

