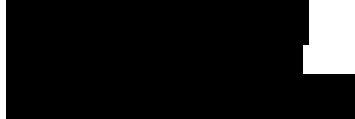


**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**IN THE MATTER OF:**



MAHS Reg. No.: 15-007713  
Issue No.: 3005  
Agency Case No.: [REDACTED]  
Hearing Date: September 10, 2015  
County: Allegan

**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 10, 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) 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 May 26, 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 October 16, 2013, the Respondent reported that he was currently dating other FAP benefits and that he was either blind or disabled. The OIG Agent testified that the Respondent did not have a disability, though he claimed a physical one. The OIG Agent could not identify what the physical disability was. The Respondent completed school through the 12<sup>th</sup> grade.
5. The Respondent began using FAP benefits outside of the State of Michigan beginning in January 5, 2014.
6. The OIG indicates that the time period they are considering the fraud period is July 24, 2014, to August 31, 2014.
7. During the alleged OI period, the Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
8. During the alleged OI period, the Respondent was issued SNAP benefits from the State of [REDACTED]
9. This was the Respondent's first alleged IPV.
10. 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.

Effective October 1, 2014, 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 \$500 or more, or
- the total amount is less than \$500, 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.

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 received concurrent benefits for five weeks. The evidence indicates that the Respondent claims a disability, and though the OIG Agent could not identify the claimed disability the OIG Agent testified that it was a physical one. The Respondent completed school through the 12<sup>th</sup> grade or possibly a GED completion certificate. On his Assistance Application for benefits, the Respondent reported that he was receiving food stamps. This report belies his intent to deceive the Department. The OI period is only five weeks, the Respondent reported that he was receiving food stamps on his Assistance Application; the Respondent reported that he had a disability and it is quite likely that the Respondent has less than a high school education. As such, this Administrative Law Judge concludes that the evidence is insufficient, based on a clear and convincing standard, that the Respondent intentionally withheld information for the purpose of maintaining program benefits.

**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 Respondent committed an IPV.

*Susanne E. Harris*

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

Date Mailed: **9/11/2015**

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:

