

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

IN THE MATTER OF:



MAHS Reg. No.: 15-012457
Issue No.: 1005; 3005
Agency Case No.: [REDACTED]
Hearing Date: November 05, 2015
County: GENESEE-DISTRICT 6 (CLIO R

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 November 5, 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) and Family Independence Program (FIP) 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 July 13, 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 FIP and FAP benefits issued by the Department.
4. The Respondent was aware of the responsibility to report changes in household circumstances to the Department, within 10 days.

5. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the OI period for FAP is November 1, 2010 to July 31, 2011.
7. The Department's OIG indicates that the time period it is considering the OI period for FIP is November 1, 2010 to June 30, 2011.
8. 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 \$2758 in such benefits during this time period.
9. During the OI period, the Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that the Respondent was entitled to [REDACTED] in such benefits during this time period.
10. The Department alleges that the Respondent received an OI in FAP benefits in the amount of [REDACTED].
11. The Department alleges that the Respondent received an OI in FIP benefits in the amount of [REDACTED].
12. This was the Respondent's first alleged IPV.
13. 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.
14. During the hearing, the OIG Agent testified that the OIs that the Respondent is alleged to have received have not been recouped or collected. After the hearing, OIG [REDACTED] faxed this Administrative Law Judge a claim status report indicating that both the FAP and the FIP OIs at issue here had been determined to be client error OIs and were in "standard recoupment" claim status, though no amounts had actually been recouped. The OI periods were consistent with the OIG Agent's exhibits; however, the OI for FAP was documented as being [REDACTED] and the OI for FIP was documented as being [REDACTED]. These OI amounts do not comport with the OI amounts documented in Department's exhibits. (See facts #10 and 11)
15. During the hearing, this Administrative Law Judge asked OIG Agent [REDACTED] why it was that an alleged IPV had just been submitted for an action that occurred four years previously. The OIG investigation report indicates that the Department was alerted to the potential IPV on November 18, 2011. OIG Agent Laugavitz testified that this case was transferred to her on July 30, 2014 and that the Recoupment Specialist received the case from the Respondent's caseworker. OIG Agent [REDACTED] speculated that perhaps the case was with the Recoupment Specialist for some time.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 (2010), 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.

BAM 700 (2014) p. 1, provides that when a client group receives more benefits that it is entitled to receive, DHHS must attempt to recoup the OI. There are three different types of OIs; client error, agency error and Intentional Program Violation. It provides that the Department should use prudent judgement in evaluating an OI for suspected IPV. The Department is to 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?

When a potential over issuance is discovered, the Department's Case Worker is to refer the OI to the Recoupment Specialist within 60 days of suspecting its existence. BAM 700 p. 10. Within 60 days of receiving the referral, the Recoupment Specialist must determine if an OI actually occurred and what type of OI it is. The Recoupment Specialist, within 90 days, must refer all suspected IPV OIs to the OIG. BAM 720 (2014) p. 4. The OIG then has 12 months to refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System. BAM 720 p. 12. In this case, the Department became aware of the OI in November 2011. Clearly,

the Department has not met the timelines specified for action within the departmental policy.

More importantly, the evidence submitted clearly indicates that the Department has already determined that the OIs in this case were due to the Respondent's error and that the Department is entitled to 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

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

Date Mailed: **11/6/2015**

SEH/sw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

[REDACTED]