

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-013117
Issue No.: 3005
Agency Case No.: [REDACTED]
Hearing Date: September 30, 2015
County: Isabella

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 September 30, 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) 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 20, 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 benefits issued by the Department.

4. The Respondent was aware of the responsibility to report changes in his household circumstances within 10 days to the Department.
5. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. However, the Administrative Law Judge takes official notice that telephone usage and currency are limited in correctional facilities. It is unknown whether or not the Respondent could purchase stamps. The Respondent reported that he was homeless on his Assistance Application.
6. The Department's OIG indicates that the time period it is considering the OI period is December 1, 2011, to April 30 2012. However, Exhibit 8 indicates that the OI period is December 1, 2011, to June 30, 2012.
7. 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 \$0.00 in such benefits during this time period.
8. The Department alleges that the Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]. However, Exhibit 8 indicates that the OI is \$ [REDACTED].
9. This was Respondent's first alleged IPV.
10. 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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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 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 \$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 (2011), 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 is also suspected for a client who is alleged to have trafficked FAP benefits. 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 Department met its burden of proving, by a clear and convincing standard, that the Respondent failed to report a change in residence from homelessness to incarceration to the Department. There is no evidence to suggest that the Respondent had a physical or mental disability which would interfere with his reporting requirements. However, this Administrative Law Judge concludes that the Respondent's incarceration status to interfere with his ability to report his changing residence to the Department. In correctional facilities, telephone calls can be cost prohibitive; and it is unknown if the Claimant had the resources to purchase postage to write to the Department. Lastly, the OI was discovered because the Respondent re-applied for benefits apparently unaware that his FAP case had never closed. This belies the Respondent's intent to defraud the Department. There is no evidence to suggest that the FAP benefits issued were ever even used; and if they were, Respondent would have known that he not yet need re-apply for FAP benefits. As such, this Administrative Law Judge concludes that the evidence is insufficient, by a clear and convincing standard, to establish that the Respondent withheld information from the Department for the purpose of maintaining program benefits.

Disqualification

A client who is found to have committed an IPV By a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 12. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 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. 13.

In this case, this Administrative Law Judge has concluded that the Respondent did not commit an IPV. 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, p. 1. In this case, the Department has submitted inconsistent evidence of the time of the Respondent's incarceration and inconsistent evidence of the OI period and the OI amount. Therefore, the Department has not met its burden of proving that the Respondent received an OI that the Department is entitled to recoup/collect.

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, if any, concludes that the Department has all decision in the wrong not established by clear and convincing evidence that Respondent committed an IPV. The Department has also not met its burden of proving the amount of any OI the Respondent may have received. Therefore no disqualification period is imposed and no recoupment/collection action is ordered.

Susanne E. Harris

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

Date Mailed: **10/1/2015**

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:

A large black rectangular redaction box covering several lines of text in the cc field.