

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

IN THE MATTER OF:



MAHS Reg. No.: 15-013208
Issue No.: 3005
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) 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 22, 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. The Respondent was aware of the responsibility to report changes in his residence to the Department.
5. The Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

6. The Respondent began using FAP benefits outside of the State of Michigan beginning in August, 2014.
7. The OIG indicates that the time period they are considering the OI period is October 1, 2014, to May 31, 2015.
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 [REDACTED]
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 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 (2014), 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 Department has met its burden of proving, by a clear and convincing standard, that the Respondent was aware of his reporting responsibilities and yet failed to report his change in residency. The Respondent's failure to report such change resulted in his receiving an OI of the FAP and concurrent receipt of FAP benefits from Michigan and [REDACTED]. As such, the Administrative Law Judge concludes that the Respondent withheld information for the purpose of maintaining program benefits and did thereby commit his first 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 a FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, the Administrative Law Judge has concluded that the Respondent has committed his first IPV. However, the IPV is for the concurrent receipt of benefits. As such, the Administrative Law Judge concludes that the appropriate disqualification period to be imposed is 10 years.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2014), p. 1. In this case, the Department's OI period includes the months of April and May of 2015, yet the EBT issuance summary does not show that the Respondent used these benefits in [REDACTED]. The testimony was that the benefits have also not been expunged and will not be expunged until a year has passed and the benefits therefore, remain available to the Respondent. As the benefits remain available to the Respondent, though they are currently unused, this Administrative Law Judge concludes that the Department has met its burden of proving that the Respondent, as a result of his IPV, received an OI of the FAP in the amount of \$ [REDACTED] 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 concludes that the Department has established by clear and convincing evidence that the Respondent committed an IPV. The Department is **ORDERED** to initiate recoupment/collection procedures and to impose a disqualification period in accordance with departmental policy.

Susanne E. Harris

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

Date Mailed: **9/18/2015**

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:

[REDACTED]