



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 18, 2016
MAHS Docket No.: 15-011059
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 May 17, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent represented himself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for FAP?

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 1, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to truthfully answer questions regarding his income.
5. 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 fraud period is May 1, 2009 through March 31, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to 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), 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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.

- 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 (1/1/16), p. 12; ASM 165 (5/1/13), p. 1.

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 700 (1/1/16), p. 12; 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.

In this case, the Department presented evidence that Respondent was the owner of a trucking company during the fraud period. When he submitted a Redetermination (Exhibit 1 Page 14) on March 3, 2010, he reported wages of \$ [REDACTED] monthly. The Department also received a verification of employment (Exhibit 1 Page 18) that said he was earning a salary of \$ [REDACTED] per week from employment that began February 22, 2010. Respondent testified that he must have made a mistake when he said his wages were \$ [REDACTED] monthly and that he meant to say weekly.

The Department produced copies of the Form 1120S (Exhibit 1 Page 54) for 2009 which Respondent submitted to the IRS with his federal tax return. That form shows business income for 2009 of \$ [REDACTED].¹ In the Form 1120S (Exhibit 1 Page 68) for 2010, it shows business income of \$ [REDACTED]. In his Michigan tax return for 2010 (Exhibit 1 Page 76) he shows adjusted gross income of \$ [REDACTED], and additions of \$ [REDACTED], for total income (for state purposes, prior to subtractions) of \$ [REDACTED]. His income subject to tax was \$ [REDACTED] for 2010.

In another verification of employment (Exhibit 1 Page 92) Respondent's income as of March 11, 2011 was reported as \$ [REDACTED] gross. It is presumed that was weekly, based upon the checks which were also included as exhibits in subsequent pages.

The Department presented a budget worksheet (Exhibit 1 Page 111) summarizing Respondent's monthly earned income from April 2009 through March 2011. They determined his monthly earned income was \$ [REDACTED] for each month in 2009, \$ [REDACTED] for each month in 2010, \$ [REDACTED] in January 2011, and \$ [REDACTED] each month for February and March, 2011. For the months of May 2009 through March 2011, he was given \$ [REDACTED] per month in FAP, despite the tables (Exhibit 1 Pages 105-109) showing that a group of six was eligible, based upon the stated income, to receive \$ [REDACTED] per month (2009), \$ [REDACTED] per month (2010), and \$ [REDACTED] per month for February and March 2011. With no income in January 2011, the group would have received \$ [REDACTED]. See RFT 260 (10/1/10) pp 1 and 16.

The Department did not provide an application or other documentation submitted by Respondent in 2009 from which any facts can be evaluated to determine whether he was being forthcoming at the time. It did not provide any income records to support the claim that his actual income was different than his reported income for 2009. Tax records were provided for 2010 and 2011. Absent any evidence regarding his income for 2009, the Department has not met its burden of proving an IPV, or even an over-

¹ It is possible that Respondent, as the sole shareholder in his trucking business, could have been misstating his income and expenses in his tax returns, but the Department has not even suggested, much less presented any evidence, to show that he was filing false tax returns.

issuance, for 2009. As for 2010 and 2011, the Department had wage verifications reporting his income. If they had calculated his FAP benefits using the verified wages, there would not have been an OI, at least not of the magnitude that occurred here. Simply put, the Department has not presented clear and convincing evidence to prove that Respondent's benefits were based upon false information that he gave to the Department. The Department has not proved an IPV, although there was an OI as discussed below.

Disqualification

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. 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. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 15.

In this case, without proof of an IPV, there is no disqualification.

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 presented evidence that Respondent received an OI in the FAP from January 2010 through March 2011. That OI totals \$ [REDACTED], which is to be recouped.

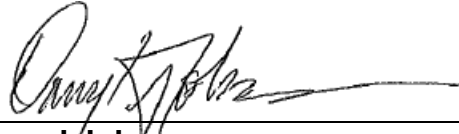
DECISION AND ORDER

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:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$ [REDACTED].

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period January 1, 2010 through March 31, 2011, and initiate recoupment/collection procedures in accordance with Department policy.

DJ/mc



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]