



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 4, 2016
MAHS Docket No.: 15-013040
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Lead Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED] (Respondent).

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 [REDACTED], 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 report changes in 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 [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$1,800 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$36.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,764.
9. This was Respondent's first alleged IPV.
10. On [REDACTED], the Michigan Administrative Hearing System (MAHS) sent Respondent a Notice of Hearing informing him of a hearing scheduled on [REDACTED].
11. On [REDACTED], the Administrative Law Judge (ALJ) sent Respondent an Adjournment Order.
12. On [REDACTED], MAHS sent Respondent a Notice of Hearing informing him of a hearing rescheduled for [REDACTED]. The notice of hearing 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 [REDACTED], 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 (May 2014), p. 7; 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 alleges that Respondent committed an IPV of his FAP benefits because he failed to report his employment to the Department, which caused an OI benefits. It should be noted that Respondent previously worked for the employer, but his employment income stopped due to disability/medical. See Exhibit A, pp. 35 and 40.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (May 2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

- Unearned income:
 - Starting or stopping a source of unearned income.
 - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 7.

First, the Department presented Respondent's online application dated [REDACTED] to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 12-24.

Second, the Department provided Respondent's employment verification. See Exhibit A, pp. 35-36.

Third, the Department presented Respondent's Mid-Certification Contact Notice (mid-certification) dated [REDACTED], in which Respondent did not report his employment income even though he was receiving it at the time. See Exhibit A, pp. 37-39. Moreover, the Department indicated that the caseworker found the unreported employment via its system and sent a verification checklist for action to be taken on [REDACTED]. See Exhibit A, pp. 10 and 41. However, the Department did not receive any response to the verification request. See Exhibit A, p. 41.

Fourth, the Department presented verification of Respondent's Retirement, Survivors, and Disability Insurance (RSDI) income. See Exhibit A, pp. 44-50. The OIG Investigation Report (OIG report) indicated that an agency error occurred during the OI period (disability benefits were not addressed in the initial budgets, allowing full benefits to be paid to Respondent). See Exhibit A, p. 4.

At the hearing, Respondent argued that he did not knowingly commit any fraud/IPV violation. Respondent testified that he wasn't sure if he had reported the income. Respondent testified that he thought he did not have to report his income because his disability allowed him to receive disability benefits as well as allowed him to be employed. Respondent might have been referring to the Medical Assistance (MA) program known as the Freedom to Work (FTW) that is available to clients with disabilities age 16 through 64 who has earned income. BEM 174 (July 2012), pp 1-3.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department's position is that Respondent committed an IPV of his FAP benefits because he failed to report his employment to the Department. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that he did not intend to commit a violation of the FAP program. Respondent's credibility is supported by the fact that there is an MA program (called Freedom To Work) that allows individuals to be employed and at the same time be eligible for MA benefits; thus, Respondent thought he did not have to report the income. The undersigned finds Respondent's testimony credible that he did not intend to commit a violation of the FAP program.

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. 15; BEM 708 (April 2014), p. 1. 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. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the undersigned finds that no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error and/or agency error.

A client/CDC provider error overissuance occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

An agency error is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. BAM 705 (July 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of his earned income to the Department. In regards to policy, the evidence established that Respondent did not report his earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Thus, an OI is present in this case.

Additionally, an agency error is present in this case regarding Respondent's RSDI income as the OIG report indicates the disability benefits were not addressed in the initial budgets. See Exhibit A, p. 4.

Applying the overissuance period standards and in consideration of the Respondent receiving the income on [REDACTED], the Department determined that the OI period began on August 1, 2012. See Exhibit A, pp. 4 and 36. It is found that the Department applied the appropriate OI begin date. See BAM 705, pp. 5 and BAM 715, pp. 4-5.

Furthermore, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 705, p. 6 and BAM 715, p. 6.

In this case, the Department presented OI budgets for [REDACTED]. See Exhibit A, pp. 54-72. The budgets included Respondent's income that was not previously budgeted, as well as his RSDI income. See Exhibit A, pp. 35-36 and 44-50. A review of the OI budgets found them to be fair and correct, except for September

2012. See BAM 705, p. 7 and BAM 715, p. 8. Policy states that If improper budgeting of income caused the overissuance, use actual income for the past overissuance month for that income source. BAM 705, p. 7. For the month of September 2012, Respondent only received earned income not unearned income (RSDI). See Exhibit A, pp. 57-58. The verification of his RSDI income showed that he received two payments in August 2012 ([REDACTED]). See Exhibit A, p. 46. The [REDACTED] payment was obviously meant for his September income, but it was actually received in [REDACTED]. Therefore, the [REDACTED] budget should have excluded any actual RSDI income received. See BAM 705, p. 7. The Department failed to establish that it properly calculated the budget for [REDACTED]. It should be noted that the August 2012 budget was properly calculated because Respondent technically even received more income in that month that made him ineligible for benefits. See Exhibit A, pp. 55-56. Nonetheless, the Department is entitled to recoup \$1,564 of FAP benefits it issued from [REDACTED], and [REDACTED].

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 **did** receive an OI of program FAP benefits in the amount of \$1,564.

The Department is **ORDERED** reduce the OI to \$1,564 for the period [REDACTED] [REDACTED] [REDACTED], and [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.

EF/hw


Eric Feldman

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 [REDACTED] 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]