



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 30, 2016
MAHS Docket No.: 15-014527
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 March 24, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Respondent, [REDACTED], and her witness, [REDACTED].

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) 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 and FIP?

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 and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to report earned 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 FAP fraud period is [REDACTED], and [REDACTED] (FAP fraud periods).
7. The Department's OIG indicates that the time period it is considering the FIP fraud period is [REDACTED] (FIP fraud period).
8. During the fraud period, Respondent was issued \$1,600 in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$348 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and FIP benefits in the amount of \$1,252.
10. This was Respondent's first alleged IPV.
11. 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 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.

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 (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 her FAP/FIP benefits because she failed to report her adults son's employment for the alleged FAP OI period of October 2006, and she failed to timely report her husband's employment income (earned income) to the Department for the alleged FAP and FIP OI period of September 2007 to December 2007.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (July 2006 and April 2007), p. 7. Changes must be reported within 10 days:

- after the client is aware of them, or
- the start date of employment.

PAM 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.

PAM 105, p. 7.

First, the Department presented Respondent's application dated [REDACTED], to show that the Respondent was aware of her responsibility to report changes as required. See Exhibit A, pp. 13-20. In the application, Respondent reported her adult

daughter and son resided in the home. See Exhibit A, p. 14. Moreover, Respondent reported her adult daughter's income, but did not report her adult son's income. See Exhibit A, p. 16. The Department presented evidence that the adult son received income at the time of the application. See Exhibit A, pp. 29-32. It should be noted that the adult daughter left the household in April 2007 and the adult son left the household in December 2006. See Exhibit A, p. 4.

Second, the Department presented Respondent's application dated [REDACTED], which was submitted before the alleged fraud period. See Exhibit A, pp. 21-28. In the application, Respondent reported that her household size was three, which included her husband. See Exhibit A, p. 22. In the application, Respondent did not report any income and the husband's employment verification confirmed that he did not receive income at time of the application. See Exhibit A, pp. 24 and 34. The husband received his first paycheck on August 30, 2007. See Exhibit A, p. 34. It should be noted that the husband's employment was not reported until December 2007. See Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits.

First, the Department's argues that Respondent failed to notify the Department of her adult son's income, which is only applicable to the alleged OI/FAP period of [REDACTED]. However, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld the income information. The Department presented Respondent's application dated August 18, 2006, however, this was before the alleged fraud period.

Moreover, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI amount for FAP benefits for the OI period.

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 720, p. 8 and see BAM 715 (July 2014), p. 6.

In the present case, the Department presented the OI budget for October 2006. See Exhibit A, pp. 57-58. Normally, the OI budget would include the adult son's income that was not previously budgeted, as it is arguing that the October 2006 OI amount is based on the failure to report the adult's son income. However, the undersigned is confused as the OI budget does not include or even budget the adult son's income. As such, the Department failed to establish an OI amount for October 2006.

Furthermore, an IPV requires that an OI exist. Department policy states that suspected IPV means an OI exists for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1. Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit overissuance resulting from the willful withholding of

information or other violation of law or regulation by the client or his authorized representative. BPG 2015-010 (July 2015), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2015-015, p. 36. Because the Department cannot establish an OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP program. Thus, Respondent is not subject to a disqualification from the FAP program for the first alleged OI period. See BAM 720, pp. 12 and 16.

Second, the Department's argues that Respondent failed to timely notify the Department of her husband's income, which is only applicable to the second alleged OI/FAP and FIP period of [REDACTED]. However, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld her husband's information. The Department presented Respondent's application dated [REDACTED], however, this was before the alleged fraud period

Moreover, the evidence presented that the husband's income was eventually reported in December 2007. See Exhibit A, p. 4. The evidence is persuasive that Respondent did not report the income timely. See PAM 105, p. 7. Nevertheless, this evidence shows that Respondent did not intentionally withhold or misrepresent the income information, as she eventually reported it to the Department. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/FIP 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. 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/FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP/FIP program. BAM 720, p. 16.

FAP Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error. It should be noted that as stated above, the Department failed to establish an OI amount for the October 2006. As such, the undersigned will only discuss the FAP/FIP OI period of September 2007 to December 2007 below:

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, p. 1.

A client error is present in this situation because Respondent failed to timely notify the Department of her husband's income. See PAM 105, p. 7. Thus, an OI was present for FAP benefits.

Applying the overissuance period standards and in consideration of the husband receiving his paycheck on [REDACTED] the Department determined that the OI period began on [REDACTED]. See Exhibit A, pp. 4 and 34. It is found that the Department applied the inappropriate OI begin date and the OI begin date is [REDACTED], [REDACTED]. See BAM 715, pp. 4-5. Therefore, the OI amount for September 2007 is removed from the OI calculation.

Additionally, 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 715, p. 6.

In this case, the Department presented OI budgets from October 2007 to December 2007. See Exhibit A, pp. 42-67. The budgets included the husband's income that was not previously budgeted. See Exhibit A, pp. 33-41. A review of the OI budgets found them to be fair and correct, except for October 2007. See BAM 715, p. 8. The October 2007 budget included gross pay amounts received on [REDACTED] and [REDACTED], but the employer's verification failed to indicate if he received such income for those dates. See Exhibit A, pp. 36 and 62. The employer's verification indicated that Respondent received wages for only [REDACTED]. See Exhibit A, p. 36. As such, the Department failed to satisfy its burden of showing an OI amount for October 2007. Thus, the Department is entitled to recoup \$326 of FAP benefits it issued for [REDACTED].

FIP Overissuance

It should be noted that the same findings and analysis in the FAP OI calculation applies below. As such, the Department is entitled to recoup \$20 of FIP benefits it issued for [REDACTED].

In summary, the total OI amount is \$346 that the Department is entitled to recoup (\$326 for the FAP OI period of [REDACTED] plus \$20 for FIP OI period of [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 FAP and FIP program benefits in the amount of \$346.

The Department is **ORDERED** to reduce the OI to \$346 for the period [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 (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]