



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 5, 2016
MAHS Docket No.: 15-014667
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 three-way telephone hearing was held on [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], 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 group composition.
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 \$7,812 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$4,303 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,509.
9. This was Respondent's first alleged IPV.
10. On [REDACTED], the Michigan Administrative Hearing System (MAHS) sent Respondent a Notice of Hearing informing her of a hearing scheduled on March 7, 2016.
11. On [REDACTED], the Administrative Law Judge (ALJ) sent Respondent an Adjournment Order.
12. On [REDACTED], MAHS sent Respondent a Notice of Hearing informing her 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 her FAP benefits because of her failure to accurately report group composition. The Department alleged that Respondent was claiming her daughter on her FAP case when in fact her daughter lived elsewhere under a guardianship.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home. BAM 105, p. 7.

Additionally, parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (November 2012), p. 1.

First, the Department presented Respondent's online application dated [REDACTED]. See Exhibit A, pp. 19-33. In the application, Respondent applied for FAP benefits for herself and her child and did not report any other household members. See Exhibit A, pp. 22-24.

Second, the Department presented evidence that the court granted Respondent's mother limit guardianship for Respondent's daughter on [REDACTED]. See Exhibit A, pp. 17-18. A review of the court documents found that Respondent, Respondent's mother, and Respondent's daughter reported the same address. See Exhibit A, pp. 10-17.

Third, on [REDACTED], the Annual Report of Guardian on the Condition of a Minor was filed with the probate court by the guardian (Respondent's mother). See Exhibit A, pp. 34-38. It was reported that Respondent "spends as much time" with her daughter as she can and that the guardianship should be continued because "...neither parent is ready for responsibility." See Exhibit A, p. 35. On [REDACTED], the court ordered to continue the limited guardianship. See Exhibit A, pp. 37-38. Again, a review of the court documents found that Respondent, Respondent's mother, and Respondent's daughter reported the same address. See Exhibit A, pp. 34-38.

Fourth, the Department presented a redetermination dated [REDACTED], which reported that Respondent and her daughter were members of the same household, but indicated that her daughter does not buy and fix food with this person. See Exhibit A, p.

40. It also appears that the caseworker added Respondent's mother as a member of the household as well as notating that Respondent lives with the grandparents and the mother. See Exhibit A, pp. 40-41.

Fifth, the Department presented a Front-End Eligibility (FEE) Investigation Report (FEE report). See Exhibit A, pp. 43-44.

Sixth, the Department presented a signed affidavit from Respondent's daughter's great-grandfather dated [REDACTED], who stated that the daughter has been living with him and his wife for over two-years and they have been her sole provider. See Exhibit A, p. 45.

Seventh, the Department presented a Home Study Outline dated [REDACTED], that was completed by Jackson County Child Protective Services (CPS) regarding modification of the guardianship. See Exhibit A, pp. 46-48. The Department indicated that all statements in the home study show that the daughter had been living in the home of the grandparents and Respondent lived elsewhere. See Exhibit A, pp. 9 and 46-48.

Eighth, the Department presented an undated letter from Respondent's mother requesting that the great-grandparents be listed as the daughter's guardian along with the mother. See Exhibit A, p. 49.

Ninth, the Department presented Respondent's redetermination dated [REDACTED], which showed the following: (i) a new address for Respondent; and (ii) Respondent reported that her and her daughter had resided together and indicated that they buy and fix food with each other. See Exhibit A, pp. 50-55.

At the hearing, Respondent argued that she did not commit a violation of the FAP program. Respondent did not deny that her mother obtained limited guardianship of her daughter and that subsequently the great-grandparents obtained permanent guardianship/custody. However, Respondent argued that she had always resided with her daughter during the alleged fraud period.

On or around [REDACTED], Respondent testified that her, her mother, her daughter, and the great-grandparents all resided together. Respondent indicated that the great-grandparents were on a separate FAP case. At the time of the [REDACTED] application, Respondent testified she called for assistance to fill out the application and the Department informed her to put her and her daughter as household members. See Exhibit A, pp. 21-24.

Then, at the time of her [REDACTED] redetermination, Respondent had a new caseworker, who said that her mother had to be included in the FAP group composition because she was living with her and she was under the age of 22. Thus, Respondent testified that the caseworker added the mother to the case and notated in the redetermination. See Exhibit A, pp. 39-42.

Then, on or around June 2014, Respondent testified that she got into an argument with the great-grandmother, which resulted in her moving out with her daughter. Respondent testified that she and her daughter moved in with her boyfriend. Respondent testified that her daughter remained with her until the great-grandparents obtained permanent guardianship/custody on or around [REDACTED].

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 argued that Respondent did not reside with her daughter, whereas, Respondent argued that she did reside with her daughter. The undersigned finds that the Department failed to establish its burden of showing that Respondent and daughter did not reside together during the alleged fraud period. For example, the Department presented the FEE investigation, affidavit, and home study outline that show that the daughter did not reside with the Respondent. See Exhibit A, pp. 43-48. However, the Department also presented court documents that showed that the Respondent and her daughter did reside together. See Exhibit A, pp. 10-18 and 34-38. This evidence is insufficient to conclude that Respondent and her daughter did not reside together during the alleged fraud period. In fact, the evidence is somewhat contradictory because one piece of evidence shows that they did not reside together, whereas, another piece of evidence shows that they did reside together. As such, the OIG agent failed to satisfy its burden of showing that Respondent did not reside with her daughter during the alleged fraud period. Because the OIG agent failed to satisfy its burden of showing that Respondent did not reside with her daughter during the alleged fraud period, it failed to show by clear and convincing evidence that Respondent intentionally withheld her group composition information for the purpose of maintaining Michigan FAP eligibility. The Department has failed to establish that Respondent committed an IPV of FAP 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 benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

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.

In the present case, the Department alleged that Respondent failed to accurately report group composition when she was claiming her daughter on her FAP case when in fact her daughter lived elsewhere under a guardianship. As such, the Department argued that Respondent received an OI of FAP benefits because she should have only received benefits for a group size of one rather than two. However, as stated in the previous analysis, the Department failed to establish its burden of showing that Respondent did not reside with her daughter during the alleged OI period. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of FAP program benefits in the amount of \$3,509 for the 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 not** receive an OI of FAP program benefits in the amount of \$3,509.

The Department is **ORDERED** to delete the OI and cease any recoupment action.

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]