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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 24, 2016
MAHS Docket No.: 15-015725-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE-MANAGER: Jonathan W. Owens

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge-Manager pursuant to Petitioner's timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge at the conclusion of the hearing conducted on April 7, 2016, and mailed on April 20, 2016, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on May 23, 2016.

ISSUE

1. Did the Administrative Law Judge (ALJ) fail to properly address all relevant issues in accordance with policy?
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 undersigned Administrative Law Manager, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Findings of Fact, Nos. 1-10 under Registration No. 15-015725, are incorporated by reference.
2. On April 7, 2016, a hearing was held resulting in a Hearing Decision mailed on April 20, 2016.
3. On April 25, 2016, the Michigan Administrative Hearing System (MAHS) received the Petitioner's Request for Rehearing/Reconsideration.
4. On May 23, 2016, the Request for Rehearing/Reconsideration was granted.

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-.3011.

In a request for reconsideration, the Petitioner asserted the Decision and Order issued on April 20, 2016 deserved reconsideration based upon the misapplication of policy and alleged failure on the part of the ALJ to address a relevant issue. The request for reconsideration was granted.

Upon review of the hearing record, this Supervising Administrative Law Judge-Manager finds the ALJ did misapply policy and did fail to address relevant issues raised by the hearing request, which did lead to an improper decision. The ALJ incorrectly concluded that the Petitioner was unable to seek recoupment/collection of the FAP overissuances in the present disqualification hearing. The ALJ found the Petitioner had already previously established the overissuances sought in this case. While the Petitioner had previously established the overissuances, the ALJ incorrectly concluded that he had no authority to address the overissuances sought in this case. The ALJ cited BAM 700 and 725 generically as identifying the proper remedies allowed to be pursued by the Petitioner. The ALJ mistakenly concluded that since the Petitioner had initiated recoupment, the ALJ would be unable to address the overissuances. The Petitioner's

actual request sought not to establish an overissuance, as this had been determined already. Instead, the Petitioner simply requested the benefits established as overissued be examined, and a determination made as to whether the overissuance rose to the level of an Intentional Program Violation.

The ALJ then concluded incorrectly that the Petitioner had chosen a remedy when establishing recoupment as client error. However, this was a misapplication of policy. The Petitioner's original determination of client error would not be a conclusive end to an overissuance classification. The Petitioner can bring a hearing seeking a disqualification, if after investigation the Petitioner believes the overissuance was caused by more than mere client error, but was, in fact, believed to be intentional. The Petitioner has the ability to pursue a disqualification and demonstrate whether the overissuance was caused by an intentional act. Policy supports the Petitioner acting to establish a client error, even if suspected of being an IPV. BAM 700, pg. 11 and BAM 720, pg. 4. Further, policy indicates the Petitioner will send cases for investigation that are already established and in recoupment process, which are suspected of being an IPV. BAM 700 and BAM 720, pg. 5

Based upon the above, this Supervising Administrative Law Judge-Manager finds the ALJ did error. The hearing record is, however, found to be complete and a Decision and Order can be issued that will address relevant issues raised.

Moving beyond the issue of the original Decision and Order and addressing the questions raised originally by the Petitioner's request for Intentional Program Violation, the following policies must be considered.

Effective January 1, 2016, 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 (January 2016), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

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 (January 2016), 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

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2013), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

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. 9.

In this case, the Petitioner alleges the Respondent failed to report all household income on her redetermination form completed on September 4, 2010. The Petitioner points to a subsequent State Emergency Relief (SER) application dated November 4, 2011, in which the Respondent again failed to report any other income on her signed application other than her SSI income. On this November 4, 2011 SER application, in the notes section, the following statement was written in: "Client stated that she receives a pension of \$598.00 monthly. Client has been receiving this pension since 10/15/08." This comment, added to the application, is not initialed, dated or signed.

The Petitioner alleges based upon this note that the Respondent failed to report income and, therefore, the Petitioner issued benefits the Respondent was ineligible to receive. The Petitioner found the Respondent received ██████ in FAP benefits she was not eligible to receive. The Petitioner had previously initiated recoupment of benefits based upon an earlier finding of client error.

The Petitioner submitted a copy of the September 4, 2010 redetermination form and the November 4, 2011 SER application. The Petitioner did not supply a copy of any applications prior to the September 4, 2010 redetermination form. This omission of prior applications is only of concern in that the Petitioner is alleging the Respondent was receiving unreported pension benefits as far back as October 2008. Given the Respondent was an active FAP participant at the time she completed the redetermination forms, the prior application would be relevant to determining if the Respondent intentionally withheld income information or if the omission was a misunderstanding.

At best, the information presented indicates the Respondent failed to report income on a redetermination form, but did allegedly report income when interviewed on a subsequent application. This appears to be more demonstrative of an error and not the Respondent misrepresenting information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

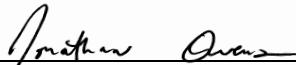
Based on the above no IPV can be found and, therefore, no disqualification from benefits can be granted.

DECISION AND ORDER

Accordingly, the ALJ's Hearing Decision and Order issued on April 20, 2016 under MAHS Number 15-015725, is **VACATED**, and based upon the above Findings of Fact and Conclusions of Law, this Supervising Administrative Law Judge-Manager finds that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.

JWO/tm



Jonathan Owens

Supervising 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.

DHHS

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