



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: June 20, 2016
MAHS Docket No.: 15-017026
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 May 26, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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 changes in household composition and changes in earned/unearned 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] (FAP fraud period).
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 \$33,931 in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$10,558 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 \$23,373.
10. This was Respondent's second 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.

As a preliminary matter, the Department alleges that Respondent committed an IPV of her FAP and FIP benefits. The undersigned address each benefit program separately below:

FAP benefits

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because (i) she failed to timely report that the father of their twin children lived in the home; (ii) she failed to report that the father was gainfully employed; (iii) she underreported her employment earnings and unemployment benefits; and (iv) she failed to report the father's unemployment compensation benefits. See Exhibit A, p. 1.

Furthermore, the Department alleges that Respondent received an OI of FAP benefits in the amount of \$18,337 for the period of [REDACTED]. See Exhibit A, p. 5. 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 establishing the OI amount, the Department presented Respondent's FAP budgets for the alleged OI periods. See Exhibit A, pp. 211-323. The undersigned reviewed the FAP budgets and determined that they are inaccurate. In this case, the Department budgeted Respondent's and the father's earned income by taking the monthly average from their quarterly earnings. See Exhibit A, pp. 211-323; 353-358; and 365-370.

Policy states if improper reporting or budgeting of income caused the overissuance, the Department uses actual income for the overissuance month for that income source. BAM 720, p. 10. The Department converts all income to a monthly amount. BAM 720, p. 10. Exception, for FAP only, do not convert the averaged monthly income reported

on a wage match. BAM 720, p. 10. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 720, p. 10.

Based on the above policy, the Department is unable to use Respondent's and the father's average monthly income as a method in determining their budgetable income for each overissuance month. See BAM 720, p. 10. The evidence fails to provide the actual income Respondent and the father received each overissuance month because it only reports their quarterly earnings, not monthly earnings. See Exhibit A, pp. 353-358 and 365-370. The Department failed to provide any other verifications to show the actual income Respondent and the father received for each overissuance month (i.e., payroll stubs). Because the Department failed to establish that it properly budgeted Respondent's and the father's earned income in the OI budgets, the Department did not satisfy its burden of showing that Respondent received an OI for FAP benefits. See BAM 700, p. 1 and BAM 720, pp. 1, 8, and 10.

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 2015-010, p. 36. Because the Department cannot establish an OI of FAP benefits, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16. Nonetheless, policy does not exclude the Department from using the average monthly income reported on the wage match to calculate the FIP benefits. Thus, the undersigned will address the alleged FIP IPV/OI below.

FIP benefits

In this case, the Department alleges that Respondent committed an IPV of her FIP benefits because (i) she failed to timely report that the father of their twin children lived in the home; (ii) she failed to report that the father was gainfully employed; (iii) she underreported her employment earnings and unemployment benefits; and (iv) she failed to report the father's unemployment compensation benefits. See Exhibit A, p. 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (June 2011), 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.

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 and marital status. BAM 105, p. 7.

Additionally, for FIP benefits, when cash assistance is requested for a dependent child, or a dependent child is a mandatory FIP Eligibility Determination Group (EDG) member, all of the following individuals who live together are in the FIP EDG: the child's legal parent(s). BEM 210 (June 2011), p. 3.

First, the Department presented Respondent's online application dated [REDACTED], to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 13-40.

Second, the Department presented Respondent's online application dated [REDACTED], [REDACTED] which was submitted during the alleged FIP fraud period. See Exhibit A, pp. 49-79. In the application, Respondent did not report the following: (i) the children's father lived in the home; and (ii) her nor the father's employment income, even though Respondent's and the father's wage history showed that they had fourth quarter 2011 employment earnings (October 2011 to December 2011). See Exhibit A, pp. 51-63, 354, and 365.

Third, the Department presented Respondent's application dated [REDACTED], which was submitted during the alleged FIP fraud period. See Exhibit A, pp. 80-99. In this application, Respondent reported that the father was in the home and she reported her income; however, she failed to report his income. See Exhibit A, pp. 84-85, 93, and 369. It should be noted that the Department provided subsequent applications, however, these occurred after the alleged FIP fraud period. See Exhibit A, pp. 100-187.

Fourth, the Department provided documentation from the Office of Child Support that: (i) the legal father of her twin sons lived in the home since they were born on [REDACTED]

██████████ and (ii) Respondent did not report this change until ██████████. See Exhibit A, p. 210.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FIP benefits.

First, the evidence established that Respondent and the father of her twin children resided together during the FIP fraud period. See Exhibit A, pp. 209-210 (CPS documentation).

Second, the Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented her household composition/income during the fraud period. For example, in the application dated ██████████, Respondent did not report that the father of her twin children resided in the home even though the Department presented evidence that he did reside in the home at the time. See Exhibit A, pp. 51-63 and 209-210. Moreover, Respondent did not report her nor the father's employment income, even though Respondent's and the father's wage history showed that they had fourth quarter employment earnings for 2011 (October 2011 to December 2011). See Exhibit A, pp. 51-63, 354, and 365. Additionally, the Department presented Respondent's application dated ██████████. See Exhibit A, pp. 80-99. In this application, Respondent eventually reported that the father was in the home and her earned income; but again, she failed to report his income. See Exhibit A, pp. 84, 93, and 369. This evidence is persuasive to conclude that Respondent committed an IPV of her FIP benefits because she misrepresented her group composition/income information by excluding the father and their income for the purpose of maintaining her FIP eligibility. In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report that the father was in the household, as well as their earned income, and that she intentionally withheld or misrepresented this information for the purpose of establishing, maintaining, increasing or preventing reduction of her FIP program benefits or eligibility.

FIP 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, pp. 15-16; 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FIP benefits. Therefore, Respondent is disqualified from FIP benefits for 24 months. BAM 720, p. 16

FIP 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 this case, the Department presented OI budgets from July 2011 to April 2012. See Exhibit A, pp. 324-352. The budgets included (i) Respondent's and the children's father's income; (ii) Respondent's unemployment compensation; and (iii) increased the group size to include the father in the household. See Exhibit A, pp. 324-375. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup \$5,036 of FIP benefits it issued for [REDACTED].

It should be noted that the FIP overissuance included supplemental warrants and administrative recoupment from a previous disqualification. See Exhibit A, pp. 325-329. Policy states that the amount of benefits received in an overissuance calculation include: regular warrants, supplemental warrants, and administrative recoupment deductions. BAM 720, p. 9. Thus, the Department properly included the above calculations.

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** established by clear and convincing evidence that Respondent committed an IPV of FIP benefits.
2. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.
3. Respondent **did** receive an OI of FIP program benefits in the amount of \$5,036.
4. Respondent **did not** receive an OI of FAP program benefits in the amount of \$18,337 and the Department is **ordered** to delete the FAP OI sought in this case.

The Department is **ORDERED** to reduce the OI to \$5,036 for the FIP period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

It is **FURTHER ORDERED** that Respondent be disqualified from **FIP** for a period of **24 months**.

EF/hw



Eric J. 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]