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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



Date Mailed: June 8, 2016
MAHS Docket No.: 15-018886-RECON
Agency No.: [REDACTED]
Petitioner: OIG
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 December 7, 2015. After being given proper notice, the Respondent failed to appear for the above hearing. A Decision and Order was issued on May 17, 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 June 8, 2016.

ISSUE

1. Did the Administrative Law Judge (ALJ) issue a Decision and Order with a typographical or obvious error resulting in the wrong conclusion?

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 Department's OIG filed a hearing request on October 12, 2015, 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 notify the Department of any changes in her circumstances that might affect her benefits.
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 June 1, 2014 through March 31, 2015, (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. Post Office as undeliverable.
11. On December 7, 2015, a hearing was held resulting in a Hearing Decision mailed on May 17, 2016.
12. On May 24, 2016, the Michigan Administrative Hearing System (MAHS) received the Petitioner's Request for Rehearing/Reconsideration.
13. On June 8, 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 that the Decision and Order issued on May 17, 2016, deserved reconsideration based upon a typographical error or an obvious error in the Decision and Order which led to the wrong conclusion. The request for reconsideration was granted.

Upon review of the hearing record, this Supervising Administrative Law Judge-Manager finds the Decision and Order at issue does have an obvious typographical error that did result in the wrong conclusion. The analysis in the Conclusions of Law conflict with final order issued.

Based upon the above, this Supervising Administrative Law Judge-Manager finds the Decision and Order must be reviewed and the obvious error corrected.

The original Decision and Order contained incorrect/obvious errors in the Findings of Fact. A review of the evidence admitted at hearing reveals that the ALJ failed to correctly articulate the dates of the fraud period, the date the Petitioner filed a request for administrative hearing, and the amount of over-issuance and penalty requested.

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.

The Petitioner filed a request for hearing regarding the alleged program violation and over-issuance on October 12, 2015. The alleged fraud period being examined was June 1, 2014 through March 31, 2015. The alleged program violation was that the Respondent failed to report income being received from employment. This failure was the alleged cause of the over-issuance in FAP benefits. The Petitioner requested the Respondent be sanctioned with a 12 month disqualification from the FAP program.

The Petitioner alleged at hearing that the Respondent completed the online DHS-1171, Assistance Application dated April 12, 2013, acknowledging her rights and responsibilities as well as her obligation to report changes in circumstances as required. The Respondent did not report employment income to the Department. The Respondent was mailed the DHS-1605, Notice of Case Action on May 7, 2013, notifying her that no employment income was budgeted towards her FAP eligibility, as well as informing her of the change reporting requirements. The Respondent was again mailed the DHS-1605, Notice of Case Action on March 7, 2014, notifying her that no employment income was budgeted towards her FAP eligibility, as well as informing her of the change reporting requirements. The Respondent completed the DHS-1010, Redetermination dated March 2, 2014, where she first reports her employment income from [REDACTED]. The subject reported her start date as April 3, 2013.

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; BEM 708. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits. For all other IPV cases involving FIP, FAP or SDA, the standard disqualification periods are one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720. 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.

In this case, the Petitioner has provided sufficient evidence which demonstrates the Respondent committed an IPV. The Respondent, as indicated above, applied for benefits and shortly thereafter began receiving income from her employer, and continued to receive the income during the time frame in question.

The Petitioner submitted adequate evidence to demonstrate the Respondent was aware of her responsibilities to report earnings and/or household income. The Respondent failed to provide this information and continued to actively withhold this information on secondary applications.

Finally, there was no evidence presented to demonstrate the Respondent had any mental or physical impairment that would limit the understanding or ability to fulfill the reporting requirements. The Petitioner has demonstrated that the actions taken by the Respondent to withhold household income were taken with the purpose of receiving program benefits beyond eligibility.

DECISION AND ORDER

Accordingly, the ALJ's Hearing Decision and Order issued on May 17, 2016, under MAHS Number 15-018886, is VACATED and this Supervising Administrative Law Judge, finds, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of [REDACTED].

The Department is ORDERED to initiate recoupment/collection of the \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP program for a period of 12 months.

JWO/tm



Jonathan W. Owens
Supervising Administrative Law Judge-Manager
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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]