



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 16, 2016
MAHS Docket No.: 15-024541
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 14, 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) 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 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 fraud period is [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$3,682 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,682.
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 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 October 1, 2015, 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 2015), 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 (October 2015), 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 she failed to report earned income(s) for a group member (her significant other) to the Department, which caused an overissuance of FAP benefits. The Department's OIG Investigation Report indicated that Respondent did not report the group member's income timely for two employers, employer 1 (3rd quarter 2011) and employer 2 ([REDACTED]). See Exhibit A, p. 3. It should be noted that employer 1 is not included in the alleged IPV/OI period and only employer 2 falls within this time period.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (December 2011 and May 2012), 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.

BAM 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. 10-29 and see also pp. 30-35 (Notice of Case Action dated [REDACTED]).

Second, the Department provided verification of the group member's employment earnings for employer 2. See Exhibit A, pp. 37-41. The employer verification indicated that the group member's employment began on [REDACTED]. See Exhibit A, pp. 37-39. However, the employer indicated that they could not provide verification of his actual earnings until [REDACTED], ongoing. See Exhibit A, pp. 37-39. The Department also provided the group member's quarterly wages for employer 1 and 2. As to employer 1, the caseworker notated on the form that they were unable to get through to the group member's employer for his payroll history. See Exhibit A, p. 42. As to employer 2, the caseworker calculated the group member's average monthly

earnings for 4th quarter of 2011 and 1st quarter of 2012 because these were the time periods in which employer 2 did not have any payroll history for the group member. See Exhibit A, p. 42.

Third, the Department presented Respondent's case comments history. See Exhibit A, p. 43. The OIG Investigation Report also notated that on [REDACTED], the caseworker documented in Bridges that Respondent returned pay stubs and a DHS-38 (Verification of Employment). See Exhibit A, pp. 3 and 43.

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

First, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld her group member's income information. The Department presented Respondent's application, however, this was before the alleged fraud period.

Second, the evidence presented that Respondent eventually reported and/or submitted verification of the group member's income. See Exhibit A, pp. 3 and 43. The evidence is persuasive that Respondent did not report the income timely. See BAM 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 program benefits or 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

The evidence established that no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (October 2015), p. 1.

A client error is present in this situation because Respondent failed to timely notify the Department of her group member's earned income. In regards to policy, the evidence established that Respondent did not report the earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Thus, an OI is present in this case.

Applying the overissuance period standards and in consideration of the group member's employment beginning on [REDACTED], the Department determined that the OI period began on [REDACTED]. See Exhibit A, pp. 3 and 38. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

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 for December 2011 to June 2012. See Exhibit A, pp. 44-58. The budgets included the group member's income from only employer 2 that was not previously budgeted. See Exhibit A, pp. 37-41. A review of the OI budgets found them to be fair and correct, except for December 2011 to March 2012.

In establishing the OI amount for December 2011 to March 2012, the Department budgeted the group member's income by taking the monthly average from his quarterly earnings. See Exhibit A, pp. 45-52. For example, the group member's quarterly earnings for the first quarter of 2012 (January thru March) was \$6,950.98. See Exhibit A, p. 42. As a result, the Department calculated the group member's monthly income from January 2012 to March 2012 to be \$2,316.99 (\$6,950.98 divided by 3 months). Thus, for March 2012, the OI budget indicated that the group member's total unreported income was \$2,316. See Exhibit A, pp. 51-52.

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 715, p. 8. The Department converts all income to a monthly amount. BAM 715, p. 8. Exception, for FAP only, do not convert the averaged monthly income reported on a wage match. BAM 715, p. 8. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 715, p. 8.

Based on the above policy, the Department is unable to take the group member's quarterly earnings and convert it to an average monthly income. See BAM 715, p. 8. The verification fails to provide the actual income the group member received for December 2011 to March 2012 because it only reported his quarterly earnings, not monthly earnings. The Department failed to provide any other verifications to show the actual income the group member received for December 2011 to March 2012. Because the Department failed to establish that it properly budgeted the group member's income for December 2011 to March 2012, the Department did not satisfy its burden of showing that Respondent received an OI for FAP benefits for December 2011 to March 2012. See BAM 700, p. 1 and BAM 715, p. 8.

Nonetheless, the Department properly used the group member's actual income received for April 2012 to June 2012. See Exhibit A, pp. 53-58. Thus, the Department is entitled to recoup \$1,578 of FAP benefits it issued from [REDACTED], [REDACTED]. See BAM 715, p. 8.

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 program benefits in the amount of \$1,578.

The Department is **ORDERED** to reduce the OI to \$1,578 for the period [REDACTED], [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]