



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 29, 2016
MAHS Docket No.: 15-024841
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 28, 2016, 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 benefits?

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 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 \$930 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 \$930.
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 timely report her employment income (earned income) to the Department, which caused an overissuance of FAP benefits. Specifically, Respondent worked for a temp agency in which she received wages from or around [REDACTED]. See Exhibit A, pp. 40-42. Respondent then obtained permanent employment at the location at which she worked as temp, and received wages from on or around [REDACTED]. See Exhibit A, p. 39.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2015), p. 10. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10.

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. 11.

First, the Department presented Respondent's online application dated [REDACTED], to show that the Respondent was aware of her responsibility to report changes as required. See Exhibit A, pp. 10-28 and see also pp. 29-34 (Notice of Case Action dated August 16, 2014).

Second, the Department presented Respondent's case comments, which indicated that on or around [REDACTED], Respondent reported that she began employment at her permanent position. See Exhibit A, p. 35. A review of Respondent's case comments discovered no report of her employment at the temp agency. See Exhibit A, pp. 35-36.

Third, the Department presented verification of Respondent's income from both the temp agency and her permanent employment. See Exhibit A, pp. 37-42.

At the hearing, Respondent argued that she did not commit an IPV of her FAP benefits. Respondent acknowledged she worked at the temp agency through which she then obtained permanent employment. As to the temp agency, Respondent testified that she timely notified her caseworker that she had obtained employment in mid-December

2014. As to the permanent employment, Respondent again argued that she timely notified the Department of her permanent employment. See Exhibit A, p. 35.

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.

As to the temp agency, Respondent argued that she timely reported this employment, even though Respondent failed to present any documented proof to support her claim. Nonetheless, the burden is on the Department and it failed to present any evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld her employer information.

As to the permanent employer, the undersigned considered this a “change in employers,” which policy requires that Respondent report this type of change as well. See BAM 105, p. 11. Nonetheless, the evidence presented that Respondent timely reported that she had obtained employment with her second employer as reflected in the case comments. See Exhibit A, p. 35. This evidence shows that Respondent did not intentionally withhold or misrepresent her income information.

In summary, 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. 1; 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

As stated previously, the Department failed to establish that Respondent committed an IPV of FAP benefits. However, the Department can still proceed with recoupment of the OI when there is client error or agency error.

A client/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.

An agency error is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. BAM 705 (October 2015), p. 1.

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 705, p. 6 and BAM 715, p. 6.

In the present case, the undersigned finds that there is both agency and client error.

As to the first employer (temp agency), a client error is present in this situation because Respondent failed to notify the Department of her earned income for her first employer. However, as to the Respondent's second employer (permanent employment), an agency error is present in this case because the evidence established that she timely reported the income for her second employer. See Exhibit A, p. 35.

In establishing the OI, the Department presented OI budgets for the period of February 2015 to March 2015. See Exhibit A, pp. 43-47. Monthly budgets were provided for the FAP programs using the employers' verification. See Exhibit A, pp. 37-42. A review of the OI budgets found them to be improperly calculated. The Department failed to provide Respondent with the 20 percent earned income deduction for her earnings from her second employer. The Department budgets the entire amount of earned and unearned countable income. BEM 550 (October 2015), p. 1. The gross countable earned income is reduced by a 20% earned income deduction. BEM 550, p. 1. For client error overissuances (OIs) due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 715, p. 8. However, for agency error OIs, the policy to exclude the 20 percent earned income deduction is not applicable. See BAM 705, pp. 1-12.

Applying the above policy, the Department would not apply the 20 percent earned income deduction for her first employer earnings because the undersigned found that to be client error. The Department would apply the 20 percent earned income deduction for her second employer earnings because the undersigned found that to be agency error. However, the undersigned found that the Department failed to apply the 20 percent earned income deduction for her second employment earnings. See Exhibit A, pp. 43-47.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to properly establish an OI amount for the FAP benefits. As stated above, the Department failed to budget the 20 percent earned income deduction for Respondent's second employer earnings due to it being agency error. See BAM 715, p. 8 and BEM 550, p. 1. As such, the Department failed to establish that it properly calculated the OI amount in accordance with Department policy.

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 program benefits in the amount of \$930.

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 (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]