



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 7, 2016
MAHS Docket No.: 15-024896
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 May 19, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented [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?

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 assets and/or shelter expenses.
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 \$10,478 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$8,701 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,777.
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 misrepresented her shelter obligation by reflecting a rent/shelter expense of \$650.00/month on her redetermination, when she in fact owned the home outright and was responsible for only taxes. See Exhibit A, p. 4.

Other changes must be reported within 10 days after the client is aware of them. BAM 105 (January 2014), p. 10. These include, but are not limited to, changes in address and shelter cost changes that result from the move. BAM 105, p. 10; see BEM 554 (February 2014), pp. 12-14 (shelter expenses); and see BEM 400 (February 2014), pp. 30-31 (homes and real property exclusions).

First, the Department presented documentation from the Office of Quality Assurance alleging that Respondent misrepresented her shelter obligation. See Exhibit A, pp. 12-20.

Second, the Department presented Respondent's redetermination received on January 2, 2014, in which the Department argues that Respondent misrepresented her shelter obligation in the redetermination. See Exhibit A, pp. 21-24. In the redetermination, Respondent reported the following: (i) she had moved to her current residence of 8688 Burt Road in the change in address section; and (ii) the statement, "Rent (\$) 650" was written in the area regarding expenses that she is responsible to pay. See Exhibit A, p. 23.

Third, the Department presented two rental obligation receipts Respondent submitted to the Department on [REDACTED]. See Exhibit A, p. 25. Both receipts were in the amounts of \$700 regarding rent for the period of [REDACTED], and [REDACTED]. See Exhibit A, pp. 10 and 25.

Fourth, the Department presented Respondent's redeterminations dated [REDACTED], [REDACTED] and [REDACTED], which were submitted throughout the alleged fraud period. See Exhibit A, pp. 26-37. In the redeterminations, Respondent reported having no assets and no changes in her monthly shelter obligation. See Exhibit A, pp. 29-30 and 36-37.

Fifth, the Department presented documentation showing that Respondent is the responsible party for the payment of taxes at her address of record. See Exhibit A, p. 38.

Sixth, the OIG Investigation Report indicated that the OIG agent spoke to Respondent. The report summarized the following: (i) Respondent indicated that her mother bought the house for her and put it in her name and she had to pay her mother back; and (ii) agent shared public records that revealed that the purchase price of the home was only \$1,600 and that even with having to pay her mother back the money at the rate of

\$650.00 per month as she reported, the debt would have been satisfied in less than three months and that she would have not gotten to claim that expense for the duration of the alleged fraud period (no purchase price presented as evidence for the record). See Exhibit A, p. 4.

At the hearing, Respondent testified as to the following: (i) she did not intend to commit a violation of the FAP program; (ii) she indicated in the redetermination dated January 2014 that she thought she would be moving to the new residence; however, the person occupying her new home did not leave until a month and a half later, which resulted in her actual move-in date being mid-March 2014; (iii) Respondent indicated that she told her caseworker when she would be moving but her caseworker informed her to put that she moved in her redetermination because she did own the home at the time; (iv) because Respondent had yet to move to her new residence, she still occupied her residence on [REDACTED], in which she did have a monthly rental obligation of \$650 and indicated such in her January 2014 redetermination; (v) Respondent provided the rental receipts for \$700 as shown in Exhibit A, p. 25 because that is where she was residing at the time; (vi) on an unspecified date, Respondent showed her caseworker that she moved into her new residence, which included providing proof of back taxes; (vii) Respondent did not dispute that she did not have a monthly obligation at her new home and only had to pay back taxes; and (viii) because her caseworker was aware that she had finally moved into her new home, she had indicated no changes in her subsequent redeterminations as there had been no changes. It should be noted that undersigned asked Respondent who her previous landlord on [REDACTED] was and Respondent replied with the proper name as indicated in the rental receipts in Exhibit A, p. 25.

Based on the foregoing information, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. The undersigned does not find Respondent's argument credible. Respondent clearly indicated in the redetermination dated January 2014 that "we moved" to her new address, which means that the event took place in the past. See Exhibit A, p. 23 (emphasis added). Thus, at the time Respondent completed the redetermination, the undersigned infers from the evidence that she had already been occupying her new home. Respondent presented no documentation proving that she moved into her new residence in mid-March 2014.

Additionally, because the undersigned does not find Respondent's argument credible, the undersigned finds that the Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented her shelter obligation. Specifically, the undersigned finds that Respondent misrepresented her shelter obligation by reflecting a rent/shelter expense of \$650.00/month on her redetermination when, she in fact owned the home outright and was responsible for only taxes. Respondent did not dispute that she owned the home outright. See Exhibit A, p. 23. Furthermore, Respondent submitted two subsequent redeterminations during the fraud period in which she reported no changes in her monthly shelter obligation, when in fact she did have change, this being that she had no such rental obligation. See Exhibit A, pp. 29-30 and 36-37. This is persuasive evidence that Respondent committed an IPV

of her FAP benefits because she intentionally withheld or misrepresented her shelter obligation for the purpose of maintaining her FAP benefits. In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report any changes in shelter obligations and that she intentionally withheld or misrepresented this information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than 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.

As stated previously, the Department has established that Respondent committed an IPV of her FAP. Moreover, it is found that the Department applied the appropriate OI begin date of [REDACTED]. See BAM 720, p. 7 and Exhibit A, pp. 5 and 21-24.

In this case, the Department presented OI budgets for February 2014 to December 2014. See Exhibit A, pp. 43-65. The budgets now reflected Respondent not having a rental obligation. See Exhibit A, pp. 43-65. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup \$1,777 of FAP benefits it issued for [REDACTED].

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.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$1,777.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$1,777 in accordance with Department policy.

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

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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]