



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 14, 2016
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 [REDACTED], 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 FAP and MA 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) of FAP and MA benefits?
3. Should Respondent be disqualified from receiving FAP benefits for 12 months?

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 FAP benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in group composition.
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 [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] 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. During the fraud period, Respondent was issued [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of [REDACTED].
11. This was Respondent's first alleged IPV for both programs.
12. 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k. .

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, **or**
 - the total OI amount is less than \$1000, **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 (August 2012), p. 10.

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 (December 2011), p. 6; 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 and MA benefits because she failed to notify the Department when her daughter was no longer residing in the home. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented two applications Respondent submitted to the Department on [REDACTED], in which Respondent acknowledged that she had received the Information Booklet advising of "Things You Must Do", which explained reporting change circumstances including group size. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits.

Additionally, the Department presented a court order dated [REDACTED] showing that the court ordered the child in question to reside with her father. The Department also submitted a Redetermination submitted by Respondent on [REDACTED]. In the [REDACTED] application, Respondent reported that the child lived in the home and that she was the primary caretaker for the child. In the [REDACTED] Redetermination, Respondent indicated that the child lived in the home 30-31 days per month.

The Department also presented evidence that the child in question was covered under her father's insurance. The Department testified that this information was not reported to the Department. Given that the Respondent submitted the applications and Redetermination after the date of the court order and indicated that her daughter was in the home, it is found that the Department has to established that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP and MA benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12 month disqualification under the FAP program.

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 Department has alleged that Respondent was issued [REDACTED] in FAP benefits during the fraud period. Further, the Department alleges that Respondent was entitled to [REDACTED] in FAP benefits during the fraud period. Likewise, the Department has alleged that Respondent was issued [REDACTED] in MA benefits during the fraud period. Further, the Department alleges that Respondent was entitled to [REDACTED] in MA benefits during the fraud period.

The Department presented documentation showing that the the Department issued MA benefits for the child in question. Because the child did not reside primarily with Respondent and was therefore not entitled to benefits. As such, Respondent was overissued MA benefits in the amount of [REDACTED]

The Department presented budgets with a group size of one, after the child in question was removed. In her [REDACTED] application, Respondent listed the date of birth and date of conception for her youngest child (not the child in question) as [REDACTED]. She also listed the date of birth and conception date for the child in question as [REDACTED]. In the [REDACTED] Redetermination, Respondent listed the date of birth of her children as [REDACTED] and [REDACTED] respectively.

There was no evidence presented to suggest that the child born [REDACTED] was not in the home. Given that the child in question was removed, reducing the group size to one, it is presumed that the original budgets were based upon a group size of two. Budgets based upon a group size of two would have been correct with the child in question removed but the youngest child added as of [REDACTED]. As such, Respondent was entitled to FAP benefits based upon a group size of one from [REDACTED]

██████████ and a group size of two from ██████████ through ██████████. Respondent received a total of ██████████ from ██████████ through ██████████. The budgets presented revealed that Respondent would have been entitled to ██████████ based upon a group size of one.

The difference between the amount Respondent received and the amount she was entitled is ██████████. It is found that Respondent was entitled to benefits issued between ██████████ based upon a group size of two. The Department is therefore entitled to recoup ██████████ in MA benefits issued to Respondent from ██████████, and ██████████ in FAP benefits issued to Respondent from ██████████.

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:

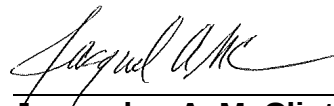
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV of FAP and MA benefits.
2. Respondent did receive an OI of FAP benefits in the amount of ██████████ for the period of ██████████.
3. Respondent did receive an OI of MA benefits in the amount of ██████████ for the period of ██████████.

The Department is ORDERED to initiate recoupment procedures for in the total amount of ██████████ in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a 12 month disqualification from FAP benefits.

JM/hw



Jacquelyn A. McClinton

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]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]