



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: August 26, 2016
MAHS Docket No.: 15-025946
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 three-way telephone hearing was held on July 28, 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) and State Disability Assistance (SDA) 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 and SDA?

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 November 16, 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 and SDA 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 FAP fraud period is February 1, 2013 to July 31, 2013 (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the SDA fraud period is April 1, 2013 to July 31, 2013 (SDA fraud period).
8. During the fraud period, Respondent was issued ██████ in FAP and SDA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and SDA benefits in the amount of ██████.
10. This was Respondent's first alleged IPV.
11. 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 his FAP and SDA benefits because he failed to report his workers' compensation income (unearned income) to the Department, which caused an overissuance of FAP and SDA benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012 and March 2013), 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:

* * *

- 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. 7.

For all types of assistance, workers' compensation payments are available under various federal and state laws to individuals with a job-related illness or injury and to survivors of a deceased worker. BEM 503 (November 2012), p. 29. Payments might be made by a government agency, an insurance company or an employer. BEM 503, p. 29. The Department counts the gross payment as unearned income. BEM 503, p. 29. Exception, the Department excludes compensation awarded for a particular use

which carries legal sanction if used for another purpose. BEM 503, p. 29. The Department excludes as income and as an asset. BEM 503, p. 29.

First, the Department presented Respondent's online application dated May 22, 2012, to show that the Respondent was aware of his responsibility to report changes as required. See Exhibit A, pp. 10-47.

Second, the Department presented Respondent's online applications dated February 6, 2013, and March 21, 2013 and both applications were submitted during the alleged FAP fraud period. See Exhibit A, pp. 48-121. In the applications, Respondent did not report any unearned income (workers' compensation), even though the evidence established that Respondent received unearned income at the time (October 5, 2012 to August 15, 2013). See Exhibit A, pp. 58-59, 96-97, and 122-124 (Notice of Compensation Payments from the Michigan Department of Licensing and Regulatory Affairs-Workers' Compensation Agency). It should be noted that the Department received a copy of Respondent's workers' compensation check on August 19, 2013, and the OIG agent indicated that Respondent possibly submitted this document. See Exhibit A, p. 124.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP and SDA benefits. As stated above, Respondent did not report any of his unearned income (workers' compensation) in the applications during the FAP fraud period and just prior to the SDA fraud period, even though the evidence established that Respondent received the unearned income at the time. See Exhibit A, pp. 58-59, 96-97, and 122-124. This is persuasive evidence that Respondent committed an IPV of his FAP and SDA benefits because he intentionally withheld or misrepresented his income information for the purpose of maintaining his FAP and SDA benefits.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report his unearned income and that he intentionally withheld or misrepresented his income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP and SDA 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 and SDA benefits. Therefore, Respondent is subject to a disqualification under the FAP and SDA programs. 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 his FAP and SDA benefits. Moreover, it is found that the Department applied the appropriate OI begin date of February 1, 2013 for the FAP benefits, and April 1, 2013 for the SDA benefits. See BAM 720, p. 7 and Exhibit A, pp. 3 and 122-124.

In regards to the FAP benefits, the Department presented OI budgets from February 2013 to July 2013. See Exhibit A, pp. 126-131. The budgets included Respondent's unearned income that was not previously budgeted. See Exhibit A, pp. 122-124. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup █████ of FAP benefits it issued for February 7, 2013 to July 31, 2013. See Exhibit A, p. 132.

In regards to the SDA benefits, the Department presented OI budgets from April 2013 to July 2013. See Exhibit A, pp. 135-138. The budgets included Respondent's unearned income that was not previously budgeted. See Exhibit A, pp. 122-124. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup █████ of SDA benefits it issued for April 16, 2013 to July 31, 2013. See Exhibit A, p. 139.

Accordingly, the Department is entitled to recoup █████ in FAP and SDA benefits (█████ OI in FAP benefits plus █████ OI in SDA benefits). See Exhibit A, pp. 132 and 139.

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 and SDA program benefits in the amount of [REDACTED].

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

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

EJF/tlf


Eric J. 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]
[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
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