



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: November 14, 2016
MAHS Docket No.: 15-026439
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 October 4, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and testified.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On November 10, 2005, Respondent was divorced. Respondent's ex-wife was granted primary physical custody of the two children. Respondent was ordered to pay child support.
2. On, January 3, 2013, Respondent signed the affidavit in an Assistance Application (DHS-1171) for Food Assistance Program (FAP) benefits. The application lists

Respondent's two children as members of the household and indicates they stay with Respondent 12-15 days per month. In section D of the application it indicates that both children live with their mother and that there is court ordered child support. (Department's Exhibit A page 66 & 73). [REDACTED] is the Department case worker who signed the application as having completed the required interview.

3. On January 15, 2013, Respondent was approved for Food Assistance Program (FAP) benefits for a benefit group of 3.
4. On December 18, 2013, Respondent submitted a Redetermination (DHS-1010) form. The form listed Respondent's two children as being members of his household. In the column for "Average Number of Days per Month Child Sleeps in Home" Respondent wrote "all month" in the row with his name on it and left the rows for the two children blank. Respondent did not indicate that anyone in the household attended school and stated that he was paying court ordered child support. (Department Exhibit A page 83 & 84)
5. On March 31, 2015, Respondent submitted a Redetermination (DHS-1010) form. The form listed Respondent's two children as being members of his household. In the column for "Average Number of Days per Month Child Sleeps in Home" Respondent wrote "6 days" in the rows for the two children.
6. In accordance with Bridges Administration Manual (BAM) 720 January 1, 2013 to December 31, 2014 has correctly been determined as the over-issuance period associated with this Food Assistance Program (FAP) over-issuance.
7. During the over-issuance period, Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

In this case, the Department presented an Assistance Application (DHS-1171) that Respondent signed on January 3, 2013 and submitted to the Department prior to the alleged OI period. During this hearing Respondent testified that he was friends with [REDACTED] spouse. Respondent testified that: [REDACTED] told him he should be eligible for Food Assistance Program (FAP) benefits: he filled out the application and gave it to [REDACTED] at her house; she told him she would see what she could do for him; he never participated in an interview before he started getting FAP benefits; and [REDACTED] lost her employment with DHS later for misconduct.

The January 3, 2013 application itself contained contradictions about where the two children lived. These contradictions are such that the Department should have obtained more specific verification on the question of whether Respondent was the primary care taker of the children.

The evidence in this record does not establish that Respondent committed an Intentional Program Violation (IPV). The over-issuance in this case was caused by [REDACTED], the Department case worker who processed Respondent's application. Even if Respondent knew or suspected that [REDACTED] approved him for Food Assistance Program (FAP) benefits he was not eligible for, he did not withhold or misrepresent any of the facts about his household in the January 3, 2013 application, or to her.

The December 18, 2013, Redetermination (DHS-1010) also contained contradictions about where the two children lived. The form shows that [REDACTED] was not the Department case worker, managing Respondent's Food Assistance Program (FAP) at that time. It cannot be known if [REDACTED] exerted any influence regarding an inquiry into the contradictions on the December 18, 2013 Redetermination (DHS-1010). However, the contradictions are such that any Department case worker should have sought more specific verification on the question of whether Respondent was the primary care taker of the children.

The over-issuance in this case was caused by agency error.

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

In this case, the evidence shows that Respondent began receiving Food Assistance Program (FAP) benefits in January 2013 which he was not eligible for. The over-issuance was caused by agency error in processing Respondent's January 3, 2013 Food Assistance Program (FAP) application. The over-issuance period includes the time period for all the Food Assistance Program (FAP) benefits Respondent was not eligible for.

Over-issuance Amount

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$[REDACTED] of Food Assistance Program (FAP) benefits during the over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent was only eligible for \$[REDACTED] of Food Assistance Program (FAP) benefits during the over-issuance period. Respondent received a \$[REDACTED], agency error, over-issuance of Food Assistance Program (FAP) benefits.

DECISION AND ORDER

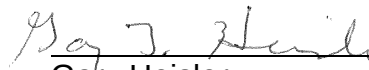
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department HAS NOT established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

It is ORDERED that the actions of the Department of Health and Human Services, regarding an Intentional Program Violation (IPV), are REVERSED. The Department may not disqualify Respondent from receipt of Food Assistance Program (FAP) benefits.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established that Respondent received a \$[REDACTED], agency error, over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

It is ORDERED that the actions of the Department of Health and Human Services, regarding a Food Assistance Program (FAP) over-issuance, are UPHELD.

GH/nr



Gary Heisler
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]