



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 7, 2016
MAHS Docket No.: 15-008867
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 three-way telephone hearing was held on March 3, 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 earned and unearned 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], and [REDACTED], [REDACTED] (fraud periods).
7. During the fraud period, Respondent was issued \$4,126 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 \$4,126.
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, 2014, 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 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

As a preliminary matter, the OIG agent notified the undersigned that Respondent could participate via telephone for the hearing; therefore, he provided Respondent's contact number. The undersigned contacted and spoke with the Respondent. Respondent requested an adjournment of the hearing as it conflicted with his employment. However, the undersigned denied the request as Respondent failed to request an adjournment ahead of the scheduled hearing. See BAM 600 (October 2015), pp. 11-12. Respondent acknowledged receipt of the notice of hearing. Nonetheless, the hearing proceeded accordingly and Respondent participated via telephone.

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 (May 2014), 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 benefits because he failed to timely report both his employment income (earned income) and unemployment income (unearned income) to the Department, which caused an overissuance of FAP benefits. The Department indicated that the failure to timely report the unearned income affected the alleged fraud period of [REDACTED]. Moreover, the Department indicated that the failure to timely report the earned income affected the alleged fraud period of [REDACTED], [REDACTED].

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (December 2011 and November 2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, pp. 7 and 9.

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.
- 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.

First, the Department presented Respondent's application dated [REDACTED], to show that the Respondent was aware of his responsibility to report changes as required. See Exhibit A, pp. 13-31.

Second, the Department presented Respondent's redetermination dated [REDACTED], [REDACTED]. See Exhibit A, pp. 33-35. In the redetermination, Respondent reported his unemployment compensation, which the Department argued was the first time it became aware of the unearned income. See Exhibit A, pp. 33. Respondent began receiving unemployment compensation on [REDACTED]; therefore, the Department claimed that Respondent failed to timely notify the Department of the unemployment income. See Exhibit A, p. 40.

Third, the Department provided verification of Respondent's employment earnings. See Exhibit A, pp. 97-99 (The Work Number). The verification indicated that Respondent received employment earnings from [REDACTED]. See Exhibit A, p. 99. The OIG's Investigation Report stated that a wage match was run on [REDACTED] [REDACTED] which discovered that Respondent had earned income that it alleged was not previously reported. See Exhibit A, pp. 4 and 94-95.

At the hearing, Respondent argued that he reported both incomes to the Department. As to Respondent's unemployment income, Respondent testified that he notified his caseworker of the income in November 2011 when he began receiving the unemployment compensation. Moreover, Respondent testified that he even mailed his caseworker a copy of his determination letter informing the Department that he was approved for unemployment.

As to Respondent's employment income, Respondent testified that he left multiple voicemails for his caseworker in November 2012 when he began his employment. In fact, Respondent testified that he went to see his caseworker in late November 2012 or early December 2012 to report the employment. Respondent testified that the caseworker provided him an employment verification form to be completed by his employer. Respondent testified that he provided the letter to his employer, who, in turn, stated that they do not complete such forms, but that he is able to provide the Department a number to verify his employment. Respondent testified that he provided his caseworker the number.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

In regard to Respondent's unearned income, the evidence presented that Respondent did not report his income until he submitted his redetermination on [REDACTED]. See Exhibit A, p. 33. This was approximately nine months after he began receiving his unemployment compensation (first check dated [REDACTED]) that he reported his income. See Exhibit A, p. 40. The evidence is persuasive that Respondent did not report his income timely. See BAM 105, p. 7. Nevertheless, this evidence shows that Respondent did not intentionally withhold or misrepresent his income information as he eventually reported it to the Department.

In regard to Respondent's earned income, Respondent argued that he timely reported this employment, even though he failed to present any documented proof to support his claim. Nonetheless, the burden is on the Department and it failed to present any evidence to show that Respondent, during the alleged fraud period, intentionally withheld his employer information. Therefore, 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 his 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 show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error overissuance occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of his unearned and earned income. In regards to policy, the evidence established that Respondent did not report the earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

In establishing the OI amount, the Department presented OI FAP budgets for the benefit periods of January 2012 to August 2012, and January 2013 to June 2013. See Exhibit A, pp. 45-93 and 105-140. The purpose of the OI budgets is it to show how the

Department calculated the overpayment amount. See BAM 720, p. 8. However, after a thorough review of the FAP budgets presented, the Department miscalculated the OI amount.

Policy states that if improper reporting or budgeting of income caused the overissuance, the Department use actual income for that income source. BAM 715, p. 8. The Department converts all income to a monthly amount. BAM 715, p. 8. Except, for FAP only, the Department does not convert the averaged monthly income reported on a wage match. BAM 715, p. 8.

In the present case, the Department did not use Respondent's actual income received to calculate the OI amount as required per policy. See BAM 715, p. 8. Instead, the Department converted his earnings to a standard monthly amount by multiplying the amounts he received every two weeks by 2.15. See BEM 505 (July 2014), pp. 7-8. For example, Respondent received biweekly unemployment income in the amount of \$410 on [REDACTED], which resulted in a total gross income of \$820 for January 2012. See Exhibit A, p. 39. Using the above policy, the Department should budget the actual income he received for the January 2012 OI budget to be \$820. But, the OI budget for January 2012 indicated that his gross unearned income was \$881. See Exhibit A, p. 48. The Department calculated the \$881 by converting the above earnings to a standard monthly amount (using the biweekly multiplier of 2.15). BEM 505, pp. 7-8. This is an improper calculation. Instead, the January 2012 budget should have indicated that his gross unearned income was \$820, as that was the actual amount of income he received. See BAM 715, p. 8. The Department repeated this error throughout the FAP budgets.

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 establish an OI amount for FAP benefits. A review of the FAP OI budgets found them to be inaccurate. Because the Department failed to establish that it properly calculated the OI budgets, the Department did not satisfy its burden of showing that Respondent received an OI for FAP benefits. BAM 700, p. 1 and BAM 715, p. 8.

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 FAP program benefits in the amount of \$4,126.

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]