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GOVERNOR

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

MIKE ZIMMER
DIRECTOR



Date Mailed: March 24, 2016
MAHS Docket No.: 15-010513
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 March 16, 2016, from Detroit, Michigan. The Department was represented by Charles Eilrich, 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 Family Independence Program (FIP) 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 FIP?

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 and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in earned 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 periods are [REDACTED], and [REDACTED] (FAP fraud periods).
7. The Department's OIG indicates that the time period it is considering the FIP fraud period is [REDACTED] (FIP fraud period).
8. During the fraud period, Respondent was issued \$8,619 in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$54 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and FIP benefits in the amount of \$8,565.
10. This was Respondent's second 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

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 her FAP/FIP benefits because she failed to report her employment and wages to the Department, which caused an overissuance of FAP/FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (October 2000 to January 2004), pp. 5-6. Changes must be reported within 10 days:

- after the client is aware of them, or
- the start date of employment.

PAM 105, pp. 5-6. 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 5 hours per week that is expected to continue for more than one month.

PAM 105, pp. 5-6.

First, the Department's OIG Investigation Report (OIG report) stated that Respondent was employed at [REDACTED] (hereinafter referred to as "employer") starting September of 1998. See Exhibit A, p. 4. The OIG report indicated that Respondent began receiving Child Development and Care (CDC) payments as of June 2000 and these payments continued until August 2000 when she appears to have stopped working for the employer. See Exhibit A, p. 4. On [REDACTED], the OIG report indicated that Respondent returned to work and the Department was not aware that she

returned to work until August 2001. See Exhibit A, p. 4. Also, the OIG report indicated that she had unreported earnings for the same employer that affected her benefits from [REDACTED]. See Exhibit A, p. 4. As such, the Department argues that the Respondent failed to notify the Department that she had returned to her employer beginning [REDACTED] and on or around [REDACTED].

Second, the Department presented Respondent's application dated [REDACTED], to show that the Respondent was aware of her responsibility to report changes as required. See Exhibit A, pp. 85-92. In the application, Respondent reported her employment income from her employer at issue. See Exhibit A, p. 86. This application occurred before the alleged fraud period.

Third, the Department presented Respondent's application dated [REDACTED], which was submitted between the alleged fraud periods. See Exhibit A, pp. 78-84. In the application, Respondent reported household income of \$605 in one of the application sections, but it appears this might have been unearned income that she reported. See Exhibit A, p. 78. The undersigned inferred that Respondent was only reporting her unearned income because page 3, question 20, of the application asked if any person is employed or self-employed, and Respondent check-marked "no." See Exhibit A, p. 80. Thus, it appears that Respondent was only reporting her unearned income. It should be noted that Respondent's employer verification (The Work Number) showed that Respondent did not receive any income from her employer at the time of the application. See Exhibit A, p. 94.

Fourth, the Department presented Respondent's application dated [REDACTED], which was submitted during the fraud period. See Exhibit A, pp. 78-84. Again, Respondent reported household income of \$737 in one of the application sections, but it appears this might have been unearned income that she reported. See Exhibit A, p. 71. Furthermore, page 3, question 20, of the application asked if any person is employed or self-employed, and Respondent check-marked "no." See Exhibit A, p. 73. However, Respondent was employed at the time of this application. See Exhibit A, p. 94.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP and FIP benefits. Yes, Respondent did not accurately report that she was receiving employment income on her [REDACTED] application. See Exhibit A, pp. 73 and 94. On the contrary, though, Respondent also accurately reported that she was employed in her [REDACTED] application and properly reported that she was not receiving income at the time of her [REDACTED] application. See Exhibit A, pp. 73, 80, and 94. Overall, the evidence established that Respondent has a history of accurately reporting her earned income to the Department, other than this one time occasion in January 2004. This one time failure to report fails to show by clear convincing evidence that she intentionally withheld her income information for the purpose of maintaining her FAP eligibility. 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 her 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. 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP/FIP program. BAM 720, p. 16.

FIP 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 her 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. PAM 105, pp. 5-6. Thus, an OI was present for FIP benefits.

Applying the overissuance period standards, it is found that the Department applied the appropriate OI begin date. See Exhibit A, pp. 4 and 95 and BAM 715, pp. 4-5.

Additionally, 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 amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI amount, the Department presented FIP budgets for the OI period of January 2001 to August 2001. See Exhibit A, pp. 13-62. The budgets included Respondent's income that was not previously budgeted. See Exhibit A, pp. 93-95. A review of the OI budgets found them to be fair and correct. See BAM 715, p. 8. Thus, the Department is entitled to recoup \$3,217 in FIP benefits.

FAP Overissuance

First, in establishing the OI amount for the first alleged OI period, the Department presented budgets for January 2001 to August 2001. See Exhibit A, pp. 13-62. The budgets included Respondent's income that was not previously budgeted. See Exhibit A, pp. 93-95. A review of the OI budgets found them to be fair and correct, except for August 2001. The Department failed to establish that Respondent was even issued benefits for August 2001. See Exhibit A, p. 64. Nonetheless, the Department is entitled to recoup \$2,094 in FAP benefits for the period of [REDACTED].

It should be noted that the FAP budgets properly included the FIP grants Respondent received in the FAP budgets as well as what appears to be administrative recoupment (AR) that occurred for some of the benefits months based on the policy stated below: (i) policy states that if the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the overissuance month; and (ii) the amount of benefits received in an OI calculation includes: regular warrants and administrative recoupment deduction, and the amount of Electronic Benefits Transfer (EBT) benefits received in the overissuance calculation is the gross (before AR deductions) amount issued for the benefit month. BAM 715, p. 7.

Second, as to alleged OI period of May 2003 to January 2004, the Department failed to establish an OI of FAP benefits. As stated above, policy states that 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 715, p. 6. In the present case, the undersigned verifies the actual amount Respondent received before proceeding to the OI budgets. For example, the Department properly showed the amount of FIP benefits Respondent received from January 2001 to August 2001. See Exhibit A, pp. 65-70. Furthermore, the Respondent's FIP issuance printouts also provided her name and case number, which verifies that these benefits were issued to the Respondent and not to another individual. See Exhibit A, pp. 65-70.

In regards to the FAP benefits for the alleged OI period of May 2003 to January 2004, the Respondent's FAP issuance printouts failed to provide sufficient identifying information in order to show if these benefits were actually issued to the Respondent. See Exhibit A, pp. 63-64. For example, the evidence fails to provide any case number or name on the document. See Exhibit A, p. 63. Thus, the undersigned is unsure if the benefits for the OI period of May 2003 to January 2004 were actually issued to the Respondent. As to first OI period of January 2001 to July 2001, there is a case number located at the top of the document that the undersigned was able to identify that it belonged to the Respondent. See Exhibit A, pp. 63-64. Therefore, the undersigned

reviewed the FAP budgets for the first OI period. Nonetheless, the Department failed to provide sufficient identifying information in order to show if FAP benefits were actually issued to the Respondent for the second alleged OI period. See Exhibit A, pp. 63-65. Thus, the Department failed its burden of showing that a FAP OI is present in this case for the period of May 2003 to January 2004. BAM 700, p. 1 and BAM 720, p. 8.

In summary, the total OI amount is \$5,311, which consist of the following: (i) \$3,217 for the FIP period of [REDACTED]; and (ii) \$2,094 for the FAP period of [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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FIP and FAP program benefits in the amount of \$5,311.

The Department is **ORDERED** to reduce the OI to \$5,311 for FAP period of period January 1, 2001 to July 31, 2001, and FIP period of January 1, 2001 to August 31, 2001, and initiate recoupment/collection procedures in accordance with Department policy.

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]