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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 7, 2016
MAHS Docket No.: 15-017563
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 2, 2016, from Detroit, Michigan. The Department was represented by James Hall, 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 FAP and FIP 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 September 22, 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 FIP 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 \$1,279 in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$626 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP and FIP benefits in the amount of \$653.
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 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 benefits because she failed to notify the Department that a group member (her daughter) did not reside with her in the home, which caused an overissuance of FAP and FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2014), p. 9. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 9. These include, but are not limited to, changes in persons in the home. See BAM 105, p. 9.

For FAP cases, the relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212 (July 2014), p. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

For FIP cases, group composition is the determination of which individuals living together are included in the FIP eligibility determination group/program group and the FIP certified group. BEM 210 (July 2013), p. 1. To be eligible for FIP both of the following must be true:

- The group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker.
- The group cannot include an adult who has accumulated more than 60 TANF funded months, beginning October 1, 1996 or any other time limits in the Family Independence Program; see BEM 234.

BEM 210, p. 1. A dependent child is an unemancipated child who lives with a caretaker and is one of the following: (i) under age 18 or (ii) age 18 and a full-time high school student. BEM 210, p. 2.

First, the Department presented Respondent's online application dated July 17, 2014, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 11-40. In the application, Respondent reported her daughter as part of the household. See Exhibit A, pp. 15-16.

Second, the Department presented a Front-End Eligibility (FEE) report (FEE report), which summarized the OIG agent's investigative findings. See Exhibit A, pp. 41-46. On [REDACTED], the FEE report indicated that the OIG agent made in-person contact with the Respondent to inquiry if her daughter resided with her, in which Respondent reported that the daughter did. See Exhibit A, p. 42. However, the FEE report stated that Respondent informed the OIG agent that the daughter was not home that day and would be home the following day. See Exhibit A, p. 42. As such, the OIG agent made another home visit the next day, [REDACTED]. See Exhibit A, p. 42.

On [REDACTED], the FEE report indicated the following: (i) Respondent stated she lied to the OIG agent and her daughter went back to live in [REDACTED] a week ago; (ii) she reported the change to her caseworker yesterday; (iii) her daughter always lived with her except when she did live with her father in [REDACTED] from February 2013 to May 2013; (iv) she had lived in Michigan since July 2014 and prior to that she had lived in [REDACTED] from October 2013 to July 2014 and [REDACTED] from July 2006 to October 2013; and (v) she stated that the daughter is living with her aunt and uncle and provided the OIG agent their contact number. See Exhibit A, pp. 42-43.

On [REDACTED], the FEE report indicated that the OIG agent made contact with aunt and she stated that the daughter had been residing with them since May of 2013. See Exhibit A, p. 43. It should be noted that the OIG Investigation Report (OIG report) also indicated additional dates in which the agent spoke to the aunt and Respondent. See Exhibit A, p. 4. For example, on [REDACTED], the OIG report indicated that the agent spoke again to the Respondent who stated that the daughter did live with her from July 2014 to August 2014, but then the daughter went down to [REDACTED] to go to school in early September 2014. See Exhibit A, p. 4.

Third, the Department presented the daughter's school records that showed she was enrolled and attending high school in [REDACTED] from [REDACTED]. See Exhibit A, p. 47.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP/FIP benefits.

In this case, the Department presented sufficient evidence to show that Respondent's daughter did not reside in the home during the fraud period because she had lived out-of-state with her aunt and uncle in [REDACTED]. In the application, Respondent reported that her daughter was part her household. See Exhibit A, p. 16. However, the Department presented contradictory information showing that the daughter had been living with the aunt and uncle instead. See Exhibit A, pp. 43 (FEE investigation report and OIG agent indicating that it spoke to the aunt, who stated that the daughter had resided with them since May of 2013 in [REDACTED]). To support this claim, the Department presented the daughter's school records that showed she was enrolled and attending high school in [REDACTED] from [REDACTED]. See Exhibit A, p. 47. This is persuasive evidence that Respondent committed an IPV of her FAP

benefits because she intentionally withheld or misrepresented her group composition information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP 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. 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent is subject to a disqualification under the FAP/FIP program. BAM 720, p. 16.

FAP Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP/FIP benefits.

Applying the OI begin date policy, it is found that the Department applied the appropriate OI begin date of [REDACTED] (the aunt indicated that Respondent resided with them since May 2013 and application is dated [REDACTED]). BAM 720, p. 7 and Exhibit A, pp. 4, 11, and 43.

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 720, p. 8.

In establishing the OI amount, the Department presented budgets for the timeframe of August 2014 to September 2014. See Exhibit A, pp. 51-56. The undersigned finds the OI budgets to be fair and correct as it properly showed that Respondent should have received benefits based on a group size of two rather than three (minus the daughter). As such, the FAP OI amount is found to be \$368.

FIP Overissuance

In establishing the FIP OI amount, the Department presented Respondent's Benefit Summary Inquiry, which showed that she received \$285 in FIP benefits during the fraud period. The evidence established that the daughter was not in the home; therefore, there was no eligible child in the household to receive FIP benefits. See BEM 210, pp. 1-2. As such, the FIP OI amount is found to be \$285.

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 FIP program benefits in the amount of \$653.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$653 in accordance with Department policy.

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

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]