



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 17, 2016
MAHS Docket No.: 16-000357
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 14, 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?

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 group composition and 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 fraud period is [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$3,756 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$244 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,512.
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 January 1, 2016, 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 (January 2016), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

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 (January 2016), 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 (father to two of her children) resided in the household and that he had earned income, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2014 and January 2015), pp. 10-11. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, pp. 10-11.

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.

BAM 105, pp. 10-11.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, pp. 10-11. These include, but are not limited to, changes in persons in the home. See BAM 105, pp. 10-11.

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.

First, the Department presented Respondent's online application dated [REDACTED], [REDACTED] which was submitted during the alleged fraud period. See Exhibit A, pp. 25-76. In the application, Respondent reported that her household size was six (Respondent plus five minor child) and did not include the father of two of their minor children as a member of the household. See Exhibit A, pp. 25-37 (indicated his name in the absent father section). Moreover, in the additional information section of the application, Respondent indicated that the father paid for them to move to Michigan from [REDACTED], he

fully supports his two children, he is offering temporary help, and he has only been employed in Michigan for a few months. See Exhibit A, p. 54.

Second, the Department presented a lease application for the address at which Respondent resided during the alleged fraud period. See Exhibit A, pp. 11-20. A review of the lease agreement finds that the lease is in the father's name and it further indicates that the number of individuals occupying the residence is seven. See Exhibit A, pp. 11-20.

Third, the Department presented the father's employment records, which indicated that his address was the same as the Respondent's residence as of [REDACTED]. See Exhibit A, p. 23.

Fourth, the Department presented an administrative hearing decision in which Administrative Law Judge [REDACTED] affirmed the Department's decision to add the father to the FAP group. See Exhibit A, pp. 80-83 (Hearing date was [REDACTED] and decision mailed on [REDACTED]).

At the hearing, Respondent argued that she did not commit any IPV violation. Respondent indicated that she would not qualify to rent the property and that the father applied for the lease agreement in his name in order for them to move to Michigan from [REDACTED] but he did not reside with them. Respondent testified that the father has resided with her as of June 2015. Moreover, Respondent testified that father used her address for his employment records because he did not have a permanent address and used her address as a mailing address. Respondent did not provide any documentary evidence showing that he does not reside with her (i.e., driver's license, vehicle registrations, etc...).

Additionally, Respondent testified that the Office of Child Support (OCS), which is a division of the Department of Health and Human Services (DHHS), and the Friend of the Court sought child support from the father and alleged that he did not reside with her. Thus, Respondent argued that one division of DHHS, OCS in this instance, alleged that the father was not in the home, but on the other hand, OIG, which is also a division of DHHS, alleges that the father is in home. Respondent did not provide any documentary evidence from OCS and/or Friend of the Court.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV involving her FAP benefits. The undersigned does find the Respondent credible. The Department presented evidence to establish Respondent's intent during the IPV period. The Department presented Respondent's application dated [REDACTED], which was submitted during the fraud period. See Exhibit A, pp. 25-76. In the application, Respondent did not report that the father was a member of the household, even though the Department presented persuasive evidence, including the lease agreement and the

father's employment records that showed the father did reside with the Respondent at the time of the application and during the fraud period. This evidence is sufficient to establish that Respondent failed to report the father was a member of her household and that she intentionally withheld or misrepresented this information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP benefits or eligibility.

Additionally, Respondent failed to provide any documentary evidence to rebut the Department's argument that the father did not reside with her during the fraud period (i.e., his driver's license, car registration, etc...). In fact, Respondent even failed to have the father be present at the hearing to act a witness on her behalf to rebut the Department's evidence and testimony.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report that the father was a member of her household and that she intentionally withheld or misrepresented this information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP 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 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 benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

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

Applying the overissuance period standards, the Department properly determined that the OI period began on [REDACTED]. See Exhibit A, p. 4 and BAM 720, p. 7.

Additionally, 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.

In this case, the Department presented OI budgets from October 2014 to February 2014. See Exhibit A, pp. 84-92. The budgets included the father's income that was not previously reported, as well as including the father as a group member (increasing from six to seven). See Exhibit A, pp. 22-24 and 84-92. A review of the OI budgets found them to be fair and correct, except for January 2015 to February 2015. See BAM 720, p. 10.

For January 2015, the Department failed to provide any OI budget. As to February 2015, the Department alleged that the father's gross income was \$3,500. See Exhibit A, p. 90. However, the father's employment verification did not indicate that he received any income for February 2015 and reported that his last income received was on [REDACTED]. See Exhibit A, p. 24. As such, the Department failed to satisfy its burden of showing that Respondent received an OI of FAP benefits for January and February of 2015. Nonetheless, the Department established that it is entitled to recoup \$1,774 of FAP benefits it issued for [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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$1,774.

The Department is **ORDERED** to reduce the OI to \$1,774 for the period [REDACTED] and initiate recoupment/collection procedures in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP 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]