



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: April 4, 2016
MAHS Docket No.: 15-013059
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 30, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], 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 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 period is [REDACTED] (FAP fraud period).
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 \$2,926 in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,799 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 \$1,127.
10. This was Respondent's first 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 timely report her employment income (earned income) 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 (January 2006 and July 2006), p. 7. Changes must be reported within 10 days: (i) after the client is aware of them, or (ii) the start date of employment. PAM 105, p. 7.

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, p. 7.

First, 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. 12-19. At the end of the application, there also was a notes section. See Exhibit A, p. 19. In this section, the specialist made subsequent notations that occurred after the application date for the time period of [REDACTED] to [REDACTED]. See Exhibit A, p. 19. Specifically, the specialist indicated the following: (i) Respondent sent back a DHS-38 (verification of employment) and (ii) that Respondent's FAP budget was done to reflect her earned income from the employer at issue that was reported by the wage match. See Exhibit A, p. 19.

Second, the Department presented Respondent's application dated [REDACTED] which was submitted during the alleged fraud period. See Exhibit A, pp. 20-26. In the application, Respondent did not report any earned income, even though the evidence established that Respondent was employed at the time. See Exhibit A, pp. 22-30 (employment verification).

Third, the Department's OIG Investigation Report (OIG report) indicated that an agent spoke to the Respondent on [REDACTED], in which she admitted that she was employed, but that she did not report employment because it was temporary. See Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. Yes, the Department presented evidence that Respondent did not report her income in her application dated [REDACTED] and in fact, she admitted to an OIG agent that she did not report the income. See Exhibit A, pp. 4 and 20-26. However, the evidence also presented that the Department became aware of her employment income during the alleged fraud period based on the notes the specialist wrote between [REDACTED] [REDACTED]. See Exhibit A, p. 19. Thus, the evidence is persuasive that an OI is present in this case. See PAM 105, p. 7. However, in regard to Respondent intentionally committing an IPV violation, the OIG agent has failed to demonstrate by clear and convincing evidence that Respondent intentionally withheld her income information for the purpose of maintaining Michigan FAP eligibility.

Additionally, the agent to whom Respondent admitted that she did not report her income was not present for the hearing. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her 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 benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

FAP Overissuance

As stated previously, the Department failed to establish that Respondent committed an IPV of FAP and FIP benefits. 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 timely notify the Department of her earned income. Thus, an OI is present in this case.

Moreover, it is found that the Department applied the appropriate OI begin date of [REDACTED]. See BAM 715, pp. 4-5 and Exhibit A, pp. 4 and 30.

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 this case, the Department presented OI budgets from June 2006 to October 2006. See Exhibit A, pp. 32-42. The budgets included Respondent's income that was not previously reported. See Exhibit A, pp. 28-30. A review of the OI budgets found them to be fair and correct, except for September 2006. The Department miscalculated Respondent's gross earned income for September 2006. See Exhibit A, pp. 30 and 39-40. Nonetheless, the Department is entitled to recoup \$296 of FAP benefits it issued for June 2006 to August 2006, and October 2006.

FIP Overissuance

In establishing the FIP OI amount the Department presented OI budgets from August 2006 to October 2006. See Exhibit A, pp. 43-48. The budgets included Respondent's income that was not previously reported. See Exhibit A, pp. 28-30. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup \$361 of FIP benefits it issued for August 2006 to September 2006. It should be noted that the Department sought a total FIP OI amount of \$729, but that included the OI months of March 2006 to April 2006. See Exhibit A, p. 44. The Department failed to provide any OI budgets for March 2006 to April 2006. As such, the Department is only entitled to recoup \$361 of FIP benefits it issued for August 2006 to September 2006.

In summary, the Department is entitled to recoup \$657 of FIP and FAP benefits (\$296 FAP benefits for period of June 2006 to August 2006, and October 2006 plus \$361 in FIP benefits for period of August 2006 to September 2006).

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 program FAP and FIP benefits in the amount of \$657.

The Department is **ORDERED** to reduce the OI to \$657 for the FAP period of June 2006 to August 2006, and October 2006 and FIP period of August 2006 to September 2006, 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]