



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 27, 2016
MAHS Docket No.: 15-025567
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 May 9, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Respondent. [REDACTED], Respondent's brother, served as the Interpreter for the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of FIP benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) relating to FIP and FAP benefits?
4. Should Respondent be disqualified from receiving FIP and FAP benefits for 12 months?

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 FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to changes in employment and/or income status.
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] (FAP fraud period).
7. During the fraud period, Respondent was issued \$5,628.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$903.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$4,725.00.
9. This was Respondent's first alleged IPV of FAP benefits.
10. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] (FIP fraud period).
11. During the fraud period, Respondent was issued \$5,570.00 in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$102.00 in such benefits during this time period.
12. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$5,468.00.
13. This was Respondent's first alleged IPV of FIP benefits.

14. 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.

Prior to October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, **or**
 - the total OI amount is less than \$1000, **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 (May 2010), p. 10.

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 (December 2011), p. 6; 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 FIP and FAP benefits because he failed to notify the Department that he was receiving unemployment benefits from the State of Indiana at the time he submitted an application to the Department on [REDACTED]. Respondent testified that he does not read English and that someone from the Department assisted him in completing the application. A review of the application reveals that Respondent was able to provide specific information regarding his employment status. Specifically, Respondent indicated that he quit work on [REDACTED]. In a separate section, Respondent checked "yes" relating to the question of whether anyone had recently lost their only source of income.

Respondent was able to identify that his group needed assistance with food, medical and cash. Respondent clearly identified the members of his household. As such, it appears that Respondent had a clear understanding of the questions being asked in the application. The first question under Section M asked if anyone in the household received, or expected to receive (has applied for) any income other than earnings. The question asked Respondent to check all boxes that applied. One of the available boxes was unemployment benefits. Respondent did not check this box.

The Department presented evidence from the State of Indiana which revealed that on [REDACTED], Respondent received his first unemployment payment on [REDACTED] in the amount of \$353.00. At the hearing, Respondent acknowledged that he was receiving unemployment benefits and indicated that “at that time”, he asked for help because he was “having trouble” with the rent payments. Given that Respondent was able to clearly answer the questions in the application, it is found that he intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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, 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a disqualification under the FAP program.

Overissuance

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.

In support of its contention that Respondent was overissued FIP benefits, the Department showed that during the fraud period, Respondent was issued \$5,570.00 in FIP benefits. The Department presented FIP budgets for each month which showed that Respondent would have been entitled to \$102.00 if the unearned income had been timely reported.

The Department further alleged that Respondent was overissued FAP benefits. In support of this contention, the Department showed that during the fraud period, Respondent was issued \$5,628.00 in FAP benefits. In calculating the overissuance, the Department also included income provided from the FIP, which Respondent would not have received if the unearned income had been reported. The FAP budgets presented by the Department showed that Respondent would have been entitled to \$903.00 if the unearned income had been timely reported and if he had not received FIP benefits for which he was not entitled.

The evidence presented at the hearing demonstrated that Respondent failed to report unemployment benefits he received from the State of Indiana, which resulted in an

overissuance of FIP and FAP benefits. Therefore, it is found that the Department is entitled to recoup \$5,468.00 for FIP benefits issued to Respondent during the FIP fraud period and is also entitled to recoup \$4,725.00 for FAP benefits issued to Respondent during the FAP fraud period.

DECISION AND ORDER

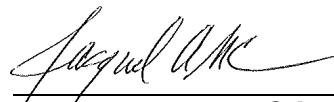
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program FIP benefits in the amount of \$5,468.00 from [REDACTED] through [REDACTED].
3. Respondent did receive an OI of program FAP benefits in the amount of \$4,725.00 from [REDACTED] through [REDACTED].

The Department is ORDERED to initiate recoupment procedures for the amount of \$749.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a 12 month disqualification from FAP benefits.

JM/hw



Jacquelyn A. McClinton

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]