



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: June 6, 2016
MAHS Docket No.: 15-020564
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 June 2, 2016, from Lansing, 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 FIP and FAP for her lifetime?

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 October 6, 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 FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to timely and accurately report her employment and 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 March 1, 2011 through January 31, 2014 for FAP and April 1, 2011 through December 31, 2011 and May 1, 2013 through November 30, 2013 for FIP (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP benefits and \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in in FIP benefits and \$ [REDACTED] in FAP benefits during this time period.
8. The Department alleges that Respondent received an OI of benefits in the amount of \$ [REDACTED] in in FIP benefits and \$ [REDACTED] in FAP benefits.
9. This was Respondent's fourth alleged IPV in the FIP and FAP programs.
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 (1/1/16), p. 12; ASM 165 (5/1/13), p. 1.

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 (1/1/16), 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, Respondent has been disqualified three times in the past (Exhibit 1 Page 136) in both the FIP and FAP programs. Her third IPV resulted in her being permanently disqualified from both programs as of August 1, 1999. Despite these lifetime disqualifications, she is still able to obtain benefits for other group members. When she does so, she has to accurately report employment and income information for all group members to the Department. When she completed a Redetermination (Page 14) on February 28, 2011, she gave an address in Michigan and reported no income. She received FIP and FAP based upon those representations. The Department received evidence from an employer proving that she had been employed from October 29, 2010 to March 6, 2011. Additional evidence (Page 34) proves that she worked for another employer from April 1, 2011 through December 2, 2011. She had another job from April 14, 2012 to November 24, 2012, and yet another job from November 30, 2012 to May 17, 2013. See Exhibit 1 Pages 34-41.

On March 4, 2011, Respondent submitted an application (Page 42) and did not report any employment income for the group. Instead, she said that no one in the group was employed. Another application (Page 58) dated October 5, 2012 shows that she declared no one in the group had any income (Page 72) from a job. She was put on notice (Page 79) that she had to report any change in employment or income within 10 days. Beyond the fact that she was not reporting her employment or income, the Department provided evidence from the State of Georgia (Pages 81-86) that she was receiving Georgia's equivalent of FAP from March 4, 2013 to August 1, 2015. Beginning May 19, 2013, Respondent used her FAP in Georgia (Page 87). Other than very brief periods in September 2013, November 2013, and a single day in January 2014, she used her FAP entirely outside of Michigan through January 26, 2014 (Page 90). She completed an application on April 8, 2013 (Page 92) requesting FAP, FIP and Medical Assistance (MA), reporting again (Page 105) that no one in the group had any income. She was reminded, again, that any changes in employment, income, or residence, had to be reported within 10 days.

BEM 220 (7/1/14) p 1 states, "To be eligible, a person must be a Michigan resident." For FAP, "A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely."

The evidence is clear and convincing that Respondent intentionally withheld information regarding her change of address, group employment, and group income, from the Department in order to continue receiving FAP and FIP that she would otherwise have been ineligible to receive. She used her FAP almost entirely outside of Michigan for eight months. That is persuasive evidence that she left Michigan with no intention to return. She has committed an IPV in both the FAP and FIP programs.

Disqualification

A client who is found to have committed a FAP or FIP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (4/1/14), 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, Respondent was previously disqualified for her lifetime in the FAP and FIP programs. She has once again committed an IPV in each program. She will continue to be disqualified for her lifetime in each program.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, Respondent received \$ [REDACTED] in FIP during the fraud period. She and her group were only eligible to receive \$ [REDACTED] during that time. The Department has established an OI of \$ [REDACTED] in FIP that is to be recouped. Respondent – and her group – also received \$ [REDACTED] in FAP during the fraud period. She – and her group – were only eligible to receive \$ [REDACTED] in FAP. The Department has established an OI of \$ [REDACTED] in FAP that is to be recouped. See Exhibit 1 Pages 138-197. The total recoupment amount is \$ [REDACTED]

DECISION AND ORDER

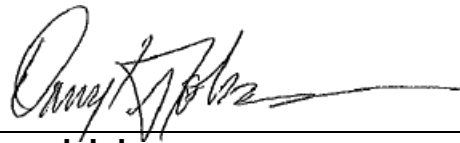
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of program benefits in the amount of \$ [REDACTED] from the FIP and FAP programs.

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

It is FURTHER ORDERED that Respondent be disqualified from FIP and FAP for her lifetime.

DJ/mc



Darryl Johnson

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]