



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 28, 2016
MAHS Docket No.: 15-024706
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 [REDACTED], 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) 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 \$2,890 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$48.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,842.
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 [REDACTED], 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 2015), 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 (October 2015), 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 benefits because she failed to report that her husband was a member of the household as well as that he had earned income from two different employers, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 ([REDACTED]), pp. 9-11. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, pp. 9-11.

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. 9-11.

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 and marital status. BAM 105, pp. 9-11.

Additionally, spouses who are legally married and live together must be in the same group. BEM 212 ([REDACTED]), p. 1.

First, the Department presented Respondent's online application dated [REDACTED], to show that the Respondent was aware of her responsibility to report changes as required. See Exhibit A, pp. 12-23. In the application, Respondent reported that she was the only household member and that her marital status was "separated." See Exhibit A, p. 15.

Second, the Department presented Respondent's redetermination submitted online on [REDACTED], which was submitted during the alleged fraud period. In the redetermination, Respondent reported that she was the only person in the home and that she had no income, even though the Department argued that her husband was in the home at the time and that he had income.

Third, the OIG Investigation Report (OIG report) indicated that the OIG agent spoke to the husband on [REDACTED], whom reported the following: (i) he stated that he and his spouse (Respondent) had lived together for the past couple of years; (ii) he indicated that he was aware that Respondent had benefits, but not anymore and was informed by the OIG agent that Respondent failed to report him in the household and his income to the Department; and (iii) the husband then appeared to change his story as to his living arrangement with Respondent. See Exhibit A, p. 4.

Fourth, the Department presented the husband's employment verification for the first employer dated [REDACTED], which showed that he was employed from [REDACTED] to [REDACTED] and reported the husband's mailing address was the same as the Respondent's. See Exhibit A, pp. 35-37.

Fifth, the Department presented the husband's employment verification for the second employer as of [REDACTED] (The Work Number), which showed that he received wages from [REDACTED] and reported the husband's address was the same as the Respondent's. See Exhibit A, pp. 38-40.

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

First, the evidence established that the husband resided with the Respondent during the fraud period. See Exhibit A, pp. 4 and 35-40.

Second, the Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented her household composition/income during the fraud period. Specially, Respondent reported that she was the only person in the household and that she had no income in the redetermination, even though the evidence established that the husband was in the home at the time and that he had income. See Exhibit A, pp. 24-29 and 35-40. This is persuasive evidence that Respondent committed an IPV of her FAP benefits because she intentionally withheld or misrepresented her group composition/income information for the purpose of maintaining her FAP benefits. In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report her husband was in the household as well as his earned income and that she intentionally withheld or misrepresented this information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP 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. 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 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

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.

As stated previously, the Department has established that Respondent committed an IPV of her FAP. Moreover, it is found that the Department applied the appropriate OI begin date of [REDACTED]. See BAM 720, p. 7 and Exhibit A, pp. 5 and 36.

In this case, the Department presented OI budgets from [REDACTED]. See Exhibit A, pp. 44-76. The budgets included the husband's income that was not previously budgeted and the budgets increased the group size from one to two in order to include the husband. See Exhibit A, pp. 35-40 and 44-76. A review of the OI budgets found them to be fair and correct, except for November 2015. For the November 2015, the Department used the husband's income from October 2015. See Exhibit A, pp. 39 and 65. Policy states that if improper reporting or budgeting of income caused the overissuance, use actual income for the overissuance month for that income source. BAM 720, p. 10. The Department failed to use the actual income from November 2015 and in fact, failed to present evidence of all the income the husband received for November 2015. As such, the Department failed to satisfy its burden of showing that Respondent received an OI for November 2015. Nonetheless, the Department is entitled to recoup \$2,648 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 \$2,648.

The Department is **ORDERED** to reduce the OI to \$2,648 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 [REDACTED]; 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]