



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 20, 2016
MAHS Docket No.: 15-025133
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 26, 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 FAP and SER 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) of FAP benefits?
3. Should Respondent be disqualified from receiving 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 FAP program benefits.
3. Respondent was a recipient of FAP and SER benefits issued by the Department.
4. Respondent was aware of the responsibility to changes in income and/or employment.
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 \$1,472.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,472.00.
9. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] (SER fraud period).
10. During the fraud period, Respondent was issued \$233.54 in SER benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
11. The Department alleges that Respondent received an OI in SER benefits in the amount of \$233.54.
12. This was Respondent's first alleged IPV of FAP benefits.
13. 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.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

Prior to 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 (August 2012), 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 FAP benefits because he failed to notify the Department when he secured employment. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV of his FAP benefits, the Department presented an application Respondent submitted to the Department on [REDACTED], in which Respondent acknowledged that he had received the Information Booklet advising him regarding "Things You Must Do", which explained reporting change circumstances including employment. However, this is not dispositive to show Respondent's intent to withhold information for the purpose of receiving or maintaining FAP benefits.

Additionally, the Department presented a Work Number showing that Respondent began working on [REDACTED] and continued to do so at least until [REDACTED]. The Department testified that Respondent did not report his change in circumstance. While the evidence presented seems to support a finding that Respondent failed to report his change in employment to the Department within 10 days, the Department did not provide any evidence that Respondent reapplied for FAP benefits or that he affirmatively communicated false information to the Department. As such, the intent of the Respondent is unknown. Accordingly, it is found that the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits.

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, p. 12.

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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not 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 this case, the Department is seeking recoupment of FAP and SER benefits, as it alleges that Respondent received more benefits than he was entitled.

FAP

The Department has alleged that Respondent was issued \$1,472.00 in FAP benefits during the fraud period. The Department submitted budgets which revealed that Respondent would have been entitled to \$0.00 in FAP benefits if the earned income had been reported timely. Therefore, the Department has established that an overissuance occurred in the amount of \$1,472.00, and it is therefore entitled to recoup that amount for FAP benefits it issued to Respondent during the fraud period.

SER

The Department alleged that Respondent was issued \$233.54 in SER benefits. In support of its contention that Respondent received more benefits that he was entitled, the Department testified that under its policy, the net income limit was \$445.00 and argued that Respondent's income, at the time of application, exceeded that amount. However, this is the net income limit for SER benefits which are not energy related. ERM 208, p. 4. In this case, Respondent requested SER benefits for assistance with energy related services.

Heat and electric services are defined as energy services under Department policy. ERM 301 (October 2012), p. 1. For a group to be eligible for energy services, the combined monthly *net* income that is received or expected to be received by all SER group members in the 30-day countable income period beginning on the date the signed SER application is submitted cannot exceed the standard for SER energy/LIHEAP services for the number of group members. ERM 208 (October 2012),

p. 1. For a group size of one, Respondent's group size, the applicable SER income limit is \$1,397.00. ERM 208, p. 4.

The Department presented evidence which showed that Respondent received the following net income for the relevant time period: \$297.25 on [REDACTED]; \$320.85 on [REDACTED]; \$322.21 on [REDACTED]; and \$195.79 on [REDACTED]. As such, Respondent's total income for November 2012 was \$1,136.10, which was below the income limit. Because the Department requested recoupment based upon the premise that Respondent was not entitled to SER benefits due to exceeding the income limit, it is found that the Department has failed to establish an overissuance in the amount of \$233.54.

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:

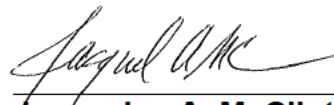
1. The Department has not established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.
2. Respondent did receive an OI of program FAP benefits in the amount of \$1,472.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,472.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to disqualification from FAP benefits.

The Department is not allowed to initiate recoupment procedures in the amount of \$233.54 relating to SER benefits received by Respondent from [REDACTED] through [REDACTED].

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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]