



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 30, 2016
MAHS Docket No.: 15-026451
Agency [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 September 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 Food Assistance Program 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 December 10, 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 FAP 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 fraud period is February 1, 2012 to August 31, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] 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 [REDACTED]
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 October 1, 2015, 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.

As a preliminary matter, on or about September 21, 2016, the undersigned Administrative Law Judge (ALJ) received a letter from Respondent in which he disputed the alleged IPV/OI and also indicated he would not be able to attend the hearing scheduled for September 26, 2016 because he has no vehicle and no job. For FAP-intentional program violation only, the Michigan Administrative Hearing System (MAHS) must grant an adjournment of a scheduled hearing if the client or Authorized Hearing Representative (AHR) makes the request at least 10 days in advance of the hearing. BAM 600 (October 2015), p. 12. It cannot exceed 30 days and MAHS may limit the number of adjournments to one. BAM 600, p. 12. In this case, Respondent did not request the adjournment at least 10-days in advance of the hearing. Thus, the undersigned did not grant the adjournment request. Instead, MAHS attempted to contact Respondent in order to have him participate via telephone for the hearing, but to no avail. Moreover, on the day of the hearing, the undersigned attempted to contact the Respondent to see if he could participate via telephone, but again, to no avail. As such, the hearing proceeded without the Respondent present and the undersigned denies Respondent's adjournment request based on no good cause presented.

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 who is a food assistance simplified reporter, committed an IPV of his FAP benefits because he failed to report his income exceeding the reporting limits, which caused an overissuance of FAP benefits.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2011), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 1. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 1.

Respondent's applicable group size in this case is one. RFT 250 indicates that the simplified reporting income limit for a group size of one is [REDACTED]. RFT 250 (October 2011), p. 1.

First, the Department presented Respondent's application dated October 28, 2010, to show that he acknowledged his responsibility to report changes as required. Exhibit A, pp. 10-29.

Second, the Department presented Respondent's redetermination dated September 12, 2011 in which he reported that he has no income and relies on doing odd jobs for neighbors and relatives, such as raking leaves, making [REDACTED] per job, and that he has sold all his minor possessions in order to survive. Exhibit A, pp. 30-33.

Third, the Department presented Respondent's employment verification, which showed that he received employment wages from [REDACTED] to [REDACTED]. Exhibit A, pp 34-37.

Fourth, the Department presented Respondent's semi-annual contact report (contact report) received on March 13, 2012, which was submitted during the alleged fraud period. Exhibit A, pp. 38-39. In the contact report, the form indicated that the household's monthly gross earned income (before taxes) used in his FAP budget is \$[REDACTED] Exhibit A, p. 39. Moreover, Respondent marked "no" to the question in the contact report that asked if the household's gross earned income (including earnings from self-employment) changed by more than [REDACTED] from the amount above, even though the Department argued that it did exceed more than [REDACTED] and that the income had exceeded the simplified report limits. See Exhibit A, p. 39. Respondent did indicate that he is self-employed and his type of business is lawn care, but his average monthly income is zero. Exhibit A, p. 39.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits. In this case, the Department presented Respondent's contact report submitted during the fraud period. See Exhibit A, pp. 38-39. SR policy states that if the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. The evidence established that the group's total gross income exceeded the group's SR income for November 2011 to December 2011, and February 2012 to August 2012; (See Exhibit A, p. 41); thus, Respondent had until on or around March 10, 2012, to report this change. See BAM 200, p. 1. However, when Respondent submitted his contact report in March 2012, he never reported that the household income had

exceeded the SR limit, i.e., for February 2012. See Exhibit A, pp. 38-39. This is persuasive evidence that Respondent committed an IPV of his FAP benefits because he intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report the income and that he intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his 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

As stated previously, the Department showed that Respondent committed an IPV of his FAP benefits. The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 5. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, p. 5. Groups report if their actual income for a month exceeds 130 percent of poverty level. BAM 200, p. 5 and see also BAM 720, p. 7 (For FAP simplified reporting, the household has until the 10th of the following month to report the change timely (see BAM 200)).

Applying the above standard, the Department determined that the OI period began on February 1, 2012. Exhibit A, pp. 3, 34-37, and 41. It is found that the Department applied the appropriate OI begin date. See BAM 200, p. 5 and BAM 720, p. 7.

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 720, p. 8.

In this case, the Department presented OI budgets for February 2012 to August 2012. Exhibit A, pp. 44-58. The budgets included Respondent's actual income received. Exhibit A, pp. 34-37. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits for the period of February 1, 2012 to August 31, 2012.

It should be noted that Respondent was issued [REDACTED] in FAP benefits for August 2012; however, the Department already expunged \$5.10 from that benefit month. See Exhibit A, p. 43 and BAM 725 (October 2015), p. 9 (Expunged electronic benefit transfer benefits are applied to existing overissuances for the program at the time the expungement occurs). Thus, that is why the Department only sought to recoup [REDACTED] in FAP benefits for August 2012 [REDACTED] issuance minus previous [REDACTED] expunged amount equals [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 \$ [REDACTED].

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period of **12 months**.

EF/tm

Eric J. 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

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CC:

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