



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: October 11, 2016
MAHS Docket No.: 15-026011
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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) and Family Independence Program (FIP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (FAP) and the Family Independence Program (FIP)?

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 and FIP benefits issued by the Department.
4. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
5. 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 \$ [REDACTED] in FAP benefits during this time period.
6. The Department alleges that Respondent received an OI in FAP benefits totaling the amount of \$ [REDACTED]
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in FIP benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP benefits totaling the amount of \$ [REDACTED]
9. This was Respondent's first alleged IPV with regard to FIP, and the second alleged IPV with regard to FAP.
10. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the U.S. Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services (formerly the Department of Human Services) Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program

Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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-.3011.

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-.3131.

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, (2014).

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 their reporting responsibilities.

BAM 700 (2014), 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 (2014).

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.

The federal Food Stamp regulations read in part:

(c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$500 or more, or
- the total overissuance amount is less than \$500, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2014), p. 12.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 15.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (2013), p. 2. 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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, with regard to the FAP program. Thus, the Department must not only prove that the Respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that Respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the Respondent intended to defraud the Department with regard to their FAP eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the Respondent was aware of the requirements to report at some point, nor is it enough to prove that the Respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the Respondent withhold critical information, but that the Respondent withheld this information with the intent to commit an IPV. Furthermore, the undersigned believes that the Department must show that Respondent had a duty to report.

In other words, the Department must prove that the Respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department in withholding information that the Department should not have had on its own.

The Department has not proven that in the current case. The Department alleges that Respondent failed to report Retirement, Survivors and Disability Insurance (RSDI) that started in [REDACTED].

However, per policy in place at that time, RSDI information is information that the Department should have already known.

BAM 801, pg. 2 (2008):

Each month, a BENDEX inquiry is sent to SSA on all new FIP, SDA, SMP, MA & FAP recipients. To add a recipient to that inquiry list, and for SDA, SMP &

services recipients, use a DHS-1190, BENDEX Authorization. See Exhibit I & Exhibit II at this end of this item. The SSA response includes any new or changed RSDI and Medicare benefit for that person. After the initial DHS inquiry, a BENDEX report is generated whenever RSDI or Medicare begins, changes or stops for active DHS recipients.

Policy states that RSDI payment information is information that the Department already had in its possession and should have been using in calculating Respondent's benefit levels. Per policy in BAM 105, while a client does have the responsibility to report unearned income changes, this policy, when combined with policy found in BAM 130 regarding information necessary to determine eligibility levels that the Department is unaware of, lead to an inference that the client must report information that the Department does not have in its own possession. One would think it ludicrous that a client would have to report to the Department FIP benefit levels for FAP determinations; the undersigned finds this situation analogous in that both benefit levels—FIP and RSDI—are of the type that the Department has, or should have per policy, in each client case file.

That the Respondent did not report does not in any way excuse the original sin of the Department failing to process the RSDI income that they were aware of, by policy, within weeks of the payments starting.

Thus, there is not clear and convincing evidence Respondent made a material misrepresentation of a type of information not already in the possession of the Department.

Therefore, as the Department has failed to provide clear and convincing evidence that claimant intentionally withheld material information in order to secure additional FAP and FIP benefits, the undersigned holds that claimant did not commit an IPV.

This is not to say that there was no error in this case. The Administrative Law Judge, after reviewing the supplied issuance budgets, has calculated that the Respondent received \$ [REDACTED] in FIP benefits they were not eligible for. The undersigned holds this to be agency error, as the agency was at fault for failing to change Respondent's FIP budget in response to the BENDEX Report. The Department may recoup this amount as agency error.

With regards to the FAP OI, the undersigned holds that the Department has failed to show the proper recoupment.

Supplied recoupment budgets show that, in calculating Respondent's unearned income, FIP benefits were used. However, recoupment of FIP benefits has been established. By allowing recouped FIP benefits to be used in a FAP recoupment budget, the undersigned would be allowing the Department to recoup based on income the

Respondent effective never received. There is no policy allowing the Department to recoup based on income not received; Respondent effectively never received the FIP benefits in question. Thus, the supplied FAP budgets are incorrect; the requested recoupment of \$ [REDACTED] is not supported by the competent evidence; and recoupment for FAP is, therefore, denied.

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. Respondent **did not** commit an IPV by clear and convincing evidence.
2. The Department **has** established that the Respondent received an overissuance in the amount of \$ [REDACTED] in FIP benefits as a result of agency error.
3. The Department **has not** established that the Respondent received an OI in the amount of \$ [REDACTED] in FAP benefits.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in FIP benefits in accordance with Department policy with regard to agency error.

RJC/jaf



Robert J. Chavez
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]

Via email

[REDACTED]