



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 31, 2016
MAHS Docket No.: 16-005297
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 October 27, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent, [REDACTED] appeared and testified.

ISSUES

Did the Respondent commit an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and thereby receive an Over issuance (OI) that the Department is entitled to recoup/collect?

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 January 6, 2016, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV.
2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. The Respondent was a recipient of FAP benefits issued by the Department.

4. The Respondent was aware of the responsibility to report all changes in household circumstances to the Department, within 10 days.
5. The 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 OI period is May 1, 2014 to November 1, 2014.
7. During the OI period, the Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that the Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that the Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. The Department has previously established that the OI at issue here was a client error debt in the amount of \$ [REDACTED]. The Respondent was notified of such client error OI in January, 2016. The Respondent credibly testified that [REDACTED] was applied to the \$ [REDACTED] debt when the Department seized her tax return in April, 2016.
10. This was the Respondent's first alleged IPV.
11. A notice of hearing was mailed to the 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 January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- 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 (2016), pp. 12, 13.

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 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 Respondent was not disputing the Department's allegations. The Respondent testified that she disagrees with the amount of the OI. The Regulation

Agent at the hearing was completely unaware that the OI had already been established and that the Department had already been collecting on the OI. The Regulation Agent did check on the Bridges computer system during the hearing to discover that the Respondent's testimony was truthful, though the Regulation Agent indicated that only \$[REDACTED] of the debt was recovered while the Respondent insisted that it was \$[REDACTED] and that she had documents from the IRS to prove such.

The Department has met its burden of proving, by a clear and convincing standard, that the Respondent was aware of the reporting responsibilities and yet failed to report a change in residence. The Respondent suffers from no physical or mental impairment which would interfere with the understanding of the reporting requirements. The Respondent's failure to report such change resulted in the Respondent receiving an OI of the FAP. As such, the Administrative Law Judge concludes that the Respondent withheld information for the purpose of maintaining program benefits and did thereby commit a first IPV.

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, pp. 15, 16. 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. 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. 1.

In this case, the Administrative Law Judge has concluded that the Respondent has committed a first IPV. Therefore, the appropriate disqualification period to be imposed is one year.

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, the Regulation Agent was unaware of any prior claim or debt. The Regulation Agent did research on the computer to determine the veracity of the Respondent's claims of a prior payments toward that debt. Upon confirming that the Respondent's testimony was mostly accurate, the Regulation Agent argued that a new debt in the amount of \$[REDACTED] be established because, based on what the Regulation Agent testified that he saw on the computer, the client error debt calculations were inaccurate. Specifically, the Regulation Agent testified that when the client error debt was established, the Recoupment Specialist neglected to include two months within the OI period.

After exhaustive research, this Administrative Law Judge could find no Department policy or federal regulation which would permit the Department to amend and increase a client error debt that had already been established and collected upon. Because the Department has already established and collected on the debt, this

Administrative Law Judge concludes the Department is now precluded from now amending or increasing the debt that the Department now concedes it initially calculated in error. As such, the evidence is insufficient to establish that the Respondent received and OI of the FAP in the amount of \$ [REDACTED] that the Department is entitled to recoup/collect.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the Department has established by clear and convincing evidence that the Respondent committed an IPV. However, the Department did not establish that the Respondent received an OI in the amount of \$ [REDACTED] that the Department is entitled to recoup/collect. The Department is **ORDERED** to impose a disqualification period in accordance with departmental policy.



SH/nr

Susanne E. Harris
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]