



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 27, 2016
MAHS Docket No.: 16-005595
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 18, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and testified. Prior to this hearing Respondent signed an Intentional Program Violation Repayment Agreement (MDHHS-4350) and does not contest that she received an over-issuance of Food Assistance Program (FAP) benefits. However, this hearing will proceed on the Intentional Program Violation (IPV) issue.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits.
2. On, May 28, 2013, Respondent signed and submitted a Redetermination (DHS-1010) indicating the household's only income was child support.
3. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill the reporting requirements.

4. On October 25, 2013, Respondent began receiving earned income from employment. Respondent did not report the income until May 28, 2014 when she submitted another Redetermination (DHS-1010).
5. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report the increased income.
6. This is Respondent's 1st Intentional Program Violation (IPV).
7. On January 20, 2016, The Department's OIG filed the disqualification hearing request.

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

In other words, the Department must show that the Respondent committed an act or omission, which they knew would result in receiving assistance they were not eligible for.

In this case, the Department presented a Redetermination (DHS-1010) that Respondent submitted to the Department prior to the alleged OI period. This documentation is sufficient to establish that Respondent certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

Respondent's household began receiving earned income on October 25, 2013, when Respondent began employment. During this hearing Respondent testified that she was aware of the reporting requirements and did not report the increased income until May 29, 2014 because she was waiting for another reporting event to come up. Respondent testified that if the Department had sent her a contact report the over-issuance would not have happened. Respondent testified that her failure to report the income was an error on her part, not an act of fraud.

Respondent admits that she knew of the requirement to report the income change so she was clearly and correctly instructed regarding her reporting responsibilities. Respondent has no physical or mental impairment that limits her understanding or ability to fulfill reporting responsibilities. Neither did Respondent assert any other reason that she was unable to fulfill her reporting responsibilities. Respondent has received Food Assistance Program (FAP) benefits before and has been provided

notices which show that the amount of benefits she was receiving were based on only her household's receipt of child support. Respondent knew that an increase of household income would impact the amount of Food Assistance Program (FAP) benefits she received. Respondent's intentional failure to report the increase of household income was an omission that she understood would result in receiving Food Assistance Program (FAP) benefits she was not eligible for.

The evidence in this record establishes that Respondent committed an Intentional Program Violation.

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an 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, and other eligible group members may continue to receive benefits.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.


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, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in an over-issuance of Food Assistance Program (FAP) benefits which Respondent does not dispute. The signed Intentional Program Violation Repayment Agreement (MDHHS-4350) provides the Department authority to recoup the Food Assistance Program (FAP) over-issuance in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are UPHeld.

GH/nr



Gary Heisler
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]