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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: October 26, 2016
MAHS Docket No.: 16-012553
Agency No.: [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 [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) 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 [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 benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in group composition and 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 [REDACTED], (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 \$ [REDACTED] 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 U.S. 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:

- 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 (January 2016), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

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 (January 2016), 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 committed an IPV of his benefits because he failed to notify the Department that a group member (Respondent's girlfriend) resided in the household and that she had earned income, which caused an OI of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2015), p. 10. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 11.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 11. These include, but are not limited to, changes in persons in the home. BAM 105, p. 11.

Additionally, the Department will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212 (July 2014), p. 1.

Food Assistance Program group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation.

BEM 212, p. 1.

First, the Department presented Respondent's online application dated [REDACTED] [REDACTED] which was submitted just prior to the alleged fraud period. Exhibit A, pp. 10-38. In the application, Respondent reported that his household size was one, even though the Department argued that the girlfriend resided at the home at the time and that he should have reported her as a household member, as well as her income. Exhibit A, pp. 4 and 12-14. Respondent also reported that his residential address was [REDACTED] [REDACTED] Exhibit A, p. 12.

Second, the Department presented a Front-End Eligibility (FEE) Report dated [REDACTED] [REDACTED] Exhibit A, pp. 39-40. Moreover, the FEE Report and OIG agent's testimony indicated the following during the hearing: (i) the OIG agent made a house call to Respondent's residence and left his business card as no one was at the home; (ii) the OIG agent was then contacted by Respondent's girlfriend, [REDACTED], who stated they have been living together for the last year at the address listed in the system (Bridges); and (iii) the girlfriend reported that she did purchase and prepare food with Respondent while he was still in the home and informed the OIG agent that he had been incarcerated since [REDACTED]. Exhibit A, pp. 39-40.

Third, the Department presented the girlfriend's employment verification. See Exhibit A, pp. 42-158. It should be noted, though, that the employment verification reported her address to be [REDACTED]. See Exhibit A, p. 42. This was a different address than Respondent's residential address. When the undersigned questioned the OIG agent about the differences in the address, the OIG agent testified that he in fact ask the girlfriend about this same issue, and her response was that she never changed her address with her employer. Also, the OIG agent acknowledged that he did not confirm the girlfriend's identify (i.e., driver's license), other than her just identifying herself verbally as Respondent's girlfriend.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV involving her FAP benefits.

First, the evidence established that the girlfriend resided with the Respondent during the fraud period and that she was a member of the FAP group because both purchased and prepared food together. See Exhibit A, pp. 39-40 and BEM 212, p. 1. Specifically, the Department presented a FEE Report in which it indicated that the OIG agent spoke to the girlfriend on or about [REDACTED], who confirmed that they have lived together for the last year and that she did purchase and prepare food together, until he was incarcerated on or about [REDACTED]. See Exhibit A, p. 39. The girlfriend's statements to the OIG agent meant that Respondent and the girlfriend resided together from on or about [REDACTED], which would have covered a majority of the fraud period. Moreover, the girlfriend's statements that they resided together, she purchased and prepared food together, and that she failed to change her address on the employment verification was given directly to the testifying agent who credibly testified concerning these statements. The OIG agent's credibility is supported by the fact that he did present a FEE report and an employment verification that corroborated his testimony.

Second, the Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented his household composition and income. Specifically, the Department presented Respondent's online application dated [REDACTED], which was submitted just prior to the fraud period. Exhibit A, pp. 10-38. In the application, Respondent reported that his household size was one, even though the evidence established that the girlfriend resided at the home at this time and that she had earned income. Exhibit A, pp. 4 and 12-14. This is persuasive evidence that Respondent committed an IPV of his FAP benefits because he intentionally withheld or misrepresented his group composition/income information for the purpose of maintaining his FAP benefits. In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report his girlfriend as a member of the household as well as her earned income and that he intentionally withheld or misrepresented this 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 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

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.

As stated previously, the Department has established that Respondent committed an IPV of his FAP benefits. Moreover, it is found that the Department applied the appropriate OI begin date of [REDACTED]. See BAM 720, p. 7 and Exhibit A, pp. 3 and 39.

In this case, the Department presented OI budgets from [REDACTED]. Exhibit A, pp. 160-168. The budgets included the girlfriend's income that was not

previously budgeted and the budgets increased the group size from one to two in order to include the girlfriend. See Exhibit A, pp. 42-127 and 160-168. A review of the OI budgets found them to be fair and correct. As such, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued for [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**.

EJF/jaf



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

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]

Via email

[REDACTED]