



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: November 3, 2016
MAHS Docket No.: 16-008304
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 Family Independence Program (FIP) Cash Assistance benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of her FIP cash assistance (first)?
4. Did the Department establish, by clear and convincing evidence, that Respondent committed an IPV of her FAP (second)?
5. Should Respondent be disqualified from receiving benefits for FIP and 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 both FAP and FIP Cash Assistance benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report employment and income to the Department.
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 for FIP is [REDACTED], (fraud period).
7. The Department OIG indicates that the time period it is considering the fraud period for FAP is [REDACTED], (fraud period).
8. 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.
9. The Department alleges that Respondent received an **OI in FAP** benefits in the amount of \$ [REDACTED] Exhibit A, p. 4.
10. 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 such benefits during this time period.
11. The Department alleges that Respondent received an **OI in FIP benefits** in the amount of \$ [REDACTED] Exhibit A, p. 4.
12. This was Respondent's **second** alleged FAP IPV.
13. This was Respondent's **first** alleged FIP IPV.

14. 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 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 to .3131.

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 (1/1/16), p. 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 700 (October 1, 2016), p. 8-9; 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. 22 (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 alleged that at the time of the Respondent's application on [REDACTED], the Respondent was working as a home help provider and failed to report the income on her application. At the hearing, after reviewing the quarterly wage reports, it was determined that Respondent was not working at the time of her [REDACTED] application, and thus, correctly reported no employment. Exhibit A, pp. 12-31. Thereafter, when attending the Partnership.Accountability.Training.Hope (PATH) Work First Program, the Respondent reported that she was employed by [REDACTED]. This employment income began [REDACTED]. It was not determined why the Department did not begin using this income when calculating the Respondent's FAP benefits. The fact that the income was reported shows no intent to commit an IPV. Exhibit A, pp. 41-43.

During the hearing, it was conceded by the Department representative that the evidence presented did not establish an IPV or intent to intentionally not report income. Thus,

based upon the evidence presented, the Department has failed to establish that the Respondent committed an IPV of either her FIP cash assistance or FAP benefits.

Disqualification

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 2; BEM 708 (October 1, 2016), 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. 17.

In this case, the Department has failed to establish that the Respondent committed an IPV of her FIP and FAP benefits, and thus, is not entitled to a finding of a disqualification period for either FIP or FAP benefits.

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, after a review of both the FIP and FAP benefits presented, the overissuance budgets presented to establish an OI of FIP and FAP benefits were incorrect. After reviewing the budgets for [REDACTED], [REDACTED] and [REDACTED] [REDACTED] neither the undersigned nor the Department representative could understand the discrepancy in the budget and particularly why the gross earned income for FIP and FAP was different even though from the same employer. For example, the earned income totals for [REDACTED], both FIP and FAP OI budgets, were different yet based upon the same wages. Exhibit A pp. 47, 48 and 62, 63. See also [REDACTED] FIP gross earned income p. 51 and [REDACTED] FAP gross earned income p. 67. After attempting to determine if there was any reason or basis to explain these discrepancies, it was conceded by the Department representative that the OI budgets as presented by the Department were incorrect.

Based upon a review of the OI budgets presented, it is determined that the Department did not meet its burden of proof to establish the OI amount for the months presented for both FIP and FAP benefits, and thus, is determined not entitled to recoup any OI for both FIP and FAP benefits.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** meet its burden of proof to demonstrate that Respondent received an OI of program benefits in the amounts of \$ [REDACTED] for FAP and \$ [REDACTED] from FIP cash assistance.

The Department is ORDERED to

1. Delete the OI for FIP in the amount of \$ [REDACTED] for the period [REDACTED], and cease any recoupment action.
2. Delete the OI for FAP in the amount of \$ [REDACTED] for the period [REDACTED], and cease any recoupment action.

LMF/jaf



Lynn M. Ferris

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]

[REDACTED]