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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

[REDACTED]

Date Mailed: November 29, 2016
MAHS Docket No.: 16-008734
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on November 9, 2016, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. [REDACTED] (Respondent) appeared in person and provided testimony. [REDACTED] (Respondent's Living Together Partner (LTP))¹ appeared and testified as a witness for Respondent.

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 receiving FAP and FIP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

¹ At the time of the hearing, [REDACTED] was Respondent's husband.

1. The Department's OIG requested a hearing on March 1, 2016, to establish that Respondent received an OI of benefits as a result of having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. At all relevant times, Respondent resided at [REDACTED].
4. On October 18, 2011, Respondent submitted an online application requesting FAP benefits. On the application, Respondent listed her husband as an absent parent and indicated that they were separated. [Exhibit 1, p. 17].
5. Respondent was a recipient of FAP and FIP benefits issued by the Department. [Exhibit 1, pp. 63-104].
6. Respondent and [REDACTED] were involved in a relationship and they resided together in the same household as living together partners (LTPs) from 2007 to 2010. [Hearing Testimony].
7. Respondent and [REDACTED] were married in August 2014. [Hearing Testimony].
8. Respondent was aware of the responsibility to timely and accurately report changes to the Department as required by applicable policy and/or law.
9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill the above requirement.
10. The Department's OIG indicates that the time period it is considering the FIP fraud period is from December 1, 2011, to February 29, 2012 (FIP fraud period).
11. During the alleged FIP 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.
12. The Department contends that Respondent received an OI in FIP benefits in the amount of \$ [REDACTED].
13. The Department alleged that this was Respondent's first alleged FIP IPV.
14. The Department's OIG indicates that the time period it is considering the FAP fraud period is from December 1, 2011, to January 31, 2014 (FAP fraud period).

15. During the alleged FAP 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.
16. The Department contends that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
17. The Department alleged that this was Respondent's second alleged FAP IPV.
18. A notice of hearing was mailed to 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 Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services 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 Family Independence Agency) 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.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (10-1-2015), p. 36.

For both FIP and FAP, the OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when

correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**
 - the total OI 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.

See BAM 720, p. 12.

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. BAM 720, p. 1. [Emphasis in original]; See also 7 CFR 273(e)(6).

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. [Emphasis in original].

Clear and Convincing Evidence

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

In this case, the Department alleges that Respondent committed an IPV concerning FIP and FAP benefits when she failed to timely and properly report to the Department the proper group composition (located at [REDACTED]) in order to receive an OI of FIP and FAP benefits. Specifically, the Department contends that Respondent falsely reported that [REDACTED] was not a household group member during the alleged FIP and FAP fraud periods. The Department OIG points to documentation in the record which shows that [REDACTED] employers used Respondent's home as his mailing address during the alleged fraud periods. The Department also alleges that Respondent failed to report to the Department her proper household income during the alleged fraud periods. According to the Department, Respondent's failure to properly report resulted in an OI of FIP and FAP benefits.

Respondent, on the other hand, contends that she and [REDACTED] did live together between 2007 and 2010. However, Respondent testified that that in 2010, she and [REDACTED] separated and that he moved out of the home. [REDACTED] testified that he lived with his mother during this time period and that he received paychecks through the mail and that Respondent's address was a safer and more secure location to receive mail. Respondent states that she and [REDACTED] did not live in the same household from 2010 until the time they were married in 2014. Respondent states that although she and [REDACTED] were separated, they were on speaking terms and that she allowed him to use her mailing address. Respondent contends that she had 12 caseworkers

between the years 2011 and 2014, and that she properly and timely reported to the Department the dates that Mr. Asberry no longer lived in the household. Respondent further states that she always reported to her caseworkers all changes in household income.

Department policy requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (7-1-2015), pp. 10-11. Specifically, they must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

The determination of the issue concerning whether Respondent is guilty of an IPV boils down to a credibility assessment. During the hearing, Respondent testified that she and [REDACTED] separated and he moved out of the home in 2010 and then reconciled in 2014. Respondent said that she reported the dates [REDACTED] moved in and out as well as his proper household income during these time periods. Respondent also testified that she reported all changes to the Department in a timely manner. The Department OIG, on the other hand, was unable to provide evidence that Respondent intentionally failed to report the household group composition and changes in household income for the purpose of obtaining an OI of FIP or FAP benefits. In addition, both Respondent and [REDACTED] testified that Respondent allowed him to use her mailing address during the alleged fraud period. The Department OIG did not provide any contrary evidence in this regard. This Administrative Law Judge does not find that the clear and convincing evidence on the whole record shows that Respondent committed an IPV. The evidence in this record does not rise to the level of clear and convincing to show that Respondent intentionally failed to report information needed to make a correct benefits determination or that she intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

Accordingly, this Administrative Law Judge does not find that Respondent was guilty of an IPV concerning either FIP or FAP benefits.

Disqualification

The Department has requested that Respondent be disqualified from receiving program benefits. A disqualified person is "[a] person(s) who is ineligible for program benefits because an eligibility factor is not met or because the person refuses or fails to cooperate in meeting an eligibility factor." BPG, p. 20. A court or hearing decision that

finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

A disqualification period is defined as, “[t]he length of time, established by MDHHS, during which eligibility for program benefits does not exist.” BPG, p. 20. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

Based on the above findings of fact as well as the above analysis, the Department has not shown that Respondent was guilty of an IPV concerning either FIP or FAP benefits. In addition, the Department failed to provide any documentation in the record to show that Respondent had any prior FAP IPV. Accordingly, Respondent cannot be disqualified for either FIP or FAP benefits related to this matter.

Overissuance

The Department must also show that Respondent received an overissuance (OI) of FIP and FAP benefits. According to Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (1-1-2016) p. 1. There are three different types of OIs: (1) agency errors, (2) client errors, and (3) CDC Provider errors. See BAM 700, pp. 4-7. An agency error OI is caused by incorrect action (including delayed or no action) by DHHS staff or department processes. BAM 700, p. 4. For FIP and FAP, agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 5. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 6. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p. 5.

Family Independence Program

In this matter, the Department has shown that Respondent received an OI of FIP benefits. The record shows that Respondent received FIP benefits and was enrolled in [REDACTED] from June 2011 through October 2011. [Exh. 1, pp. 39-41]. She then became employed at [REDACTED]. [Exh. 1, pp. 39-40]. The record also shows that Respondent was employed at and received income from [REDACTED] from December 2011 through July 2012. [Exh. 1, pp. 46-53]. Respondent worked at [REDACTED] from August 2013 to the present. [Exh. 1, p. 49]. Respondent worked for [REDACTED] and [REDACTED]. [Exh. 1, pp. 46-59]. The record also included evidence that [REDACTED] worked at and received income from the [REDACTED] from October 2013 to the present and from [REDACTED]

[REDACTED] from October 2011 to 2013. [Exh. 1, pp. 54-57]. The records also indicated that [REDACTED] received unemployment compensation benefits (UCB) income during the alleged fraud period.

Respondent did not dispute the Department's calculations concerning the OI of FAP and FIP benefits. The Administrative Law Judge, as indicated above, finds that the OI was due to an agency error because the OIs were, more likely than not, due to a failure on the part of the Department to record and budget Respondent's household income correctly. In any event, Respondent received an OI of FIP benefits in the amount of \$ [REDACTED] and FAP benefits in the amount of \$ [REDACTED]. The total OI for both programs is \$ [REDACTED]. According to BAM 700, the Department may recoup this OI.

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 concerning FIP or FAP by clear and convincing evidence.
2. Respondent did receive an OI of FIP benefits in the amount of \$ [REDACTED]
3. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]
4. Respondent did receive a total OI of FIP and FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall be not be disqualified from FIP benefits for a period of 12 months.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits for a period of 24 months.

CAP/mc



C. Adam Purnell
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]