



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: December 9, 2016
MAHS Docket No.: 15-023855
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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] 016, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 or around [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 accurately report her household circumstances and to report changes in circumstances such as changes in group composition and household size.
5. The Department was not aware of Respondent having any apparent physical or mental impairment that would limit the understanding or ability to fulfill her reporting requirements and responsibilities.
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, the Department alleges that 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. (Exhibit A, p. 49)
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 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.

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 (October 2015), pp. 5,12-13.

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 2015), pp. 7-8; 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 alleged that Respondent committed an IPV of the FAP because she misrepresented her household circumstances on a [REDACTED], FAP application by reporting that her son (Child A) was living in her home full time (365 days a year), despite Child A being identified as a resident of the State of [REDACTED] (Exhibit A, pp. 1-5). The Department alleged that Respondent's failure to accurately report her household size caused an OI in FAP benefits because Respondent was approved for FAP with her son included as a group member and she continued to receive FAP benefits on his behalf until [REDACTED]. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility of benefit amount. Changes such as persons living in the home or no longer living in the home must be reported to the Department within 10 days after the client is aware of them. BAM 105 (January 2014), pp. 7-10.

In support of its contention that Respondent committed an IPV of the FAP, the Department presented a [REDACTED], FAP assistance application on which Respondent reported that her son, Child A, was residing in her home. (Exhibit A, pp. 11-32. The application is sufficient to establish that Respondent was advised of the responsibility to accurately report her circumstances and the responsibility to report changes in her circumstances, such as group size.

The Department asserted that Respondent's case was identified through a PARIS match which indicated that Child A was actively receiving food assistance benefits in the State of [REDACTED] for a time period in which he was on Respondent's case and receiving FAP benefits issued by the State of Michigan. The Department further asserted that it made a collateral contact with authorities in [REDACTED] which verified that Child A was added to a food assistance case in that State in [REDACTED]. (Exhibit A, pp. 35-39). The Department also made a collateral contact with school authorities in [REDACTED] and [REDACTED] which verified that Child A was supposed to attend school in Michigan; but the child did not transfer from his school in [REDACTED]. The documentation established that Child A attended school in [REDACTED] from [REDACTED]. (Exhibit A, pp. 1-5, 33-34).

The Department's evidence was sufficient to establish that Respondent misrepresented the circumstances of her FAP eligibility by failing to accurately report her household group size on the [REDACTED], FAP application. Therefore, the Department has established that Respondent committed an IPV of FAP benefits.

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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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. Because this was Respondent's first IPV, she is subject to a one-year disqualification under the FAP.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

At the hearing, the Department alleged that the the State of Michigan issued \$ [REDACTED] in FAP benefits to Respondent from [REDACTED]. (Exhibit A, p.49). The Department alleged that Respondent was eligible for \$ [REDACTED] in FAP benefits during this period and that she received an OI of \$ [REDACTED].

As discussed above, the Department established that Respondent's son was not living in Michigan in Respondent's home and was not eligible for the FAP benefits issued on his behalf. (See BEM 212 and BEM 220). The Department presented FAP budgets in support of its OI calculation which establish that when Respondent's son is removed from the FAP group, Respondent was eligible to receive [REDACTED] in FAP benefits during the fraud period. (Exhibit A, pp. 40-47). Therefore, the Department is entitled to recoup \$ [REDACTED] in over-issued FAP benefits, which is the difference between the amount of FAP benefits actually issued and the amount Respondent was eligible to receive during the period between [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 of the FAP.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amount already recouped or collected.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of **12 months**.



ZB/tlf

Zainab A. Baydoun
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]

Respondent

[REDACTED]

Via Email

[REDACTED]