



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 19, 2016
MAHS Docket No.: 16-009400
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 November 15, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and testified.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. The Department's Hearing Summary (MDHHS-3050) states "Agency is requesting recoupment of benefits and program disqualification due to customer not reporting assets and earned income received by himself and family members. Subject's family received FAP assistance from February 2014 - February 2015. Subject agreed to report any changes in circumstances on DHS-1171 application signed January 29, 2014 and Redetermination dated December 26, 2014. Subject received Food Assistance for a household of 3. Evidence obtained from Work

10. Respondent's wife, [REDACTED], had income during all 4 quarters of 2014 and 2015. Department's Exhibit A page 104.
11. Beginning February 11, 2015 Respondent was issued \$ [REDACTED] of Food Assistance Program (FAP) benefits. Department's Exhibit A page 114. In accordance with RFT 260 Food Assistance Issuance Tables effective October 1, 2014 to September 30, 2015, that is the correct benefit amount for both a group of 4 with a net income between \$ [REDACTED]-\$ [REDACTED] or a group of 3 with a net income of \$ [REDACTED].
12. The Department failed to meet its burden of submitting sufficient clear and convincing evidence to establish that Respondent committed an Intentional Program Violation (IPV).
13. The Department failed to meet its burden of submitting sufficient evidence to establish that Respondent received an over-issuance of Food Assistance Program (FAP) benefits.

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.

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

In this case, the Department submitted a significant amount of facts into evidence. However, there is no explanation, credible or otherwise, on how the facts prove an Intentional Program Violation (IPV) or a Food Assistance Program (FAP) over-issuance. The allegations in the Hearing Summary (MDHHS-3050) states:

Subject received Food Assistance for a household of 3. Evidence obtained from Work Number, ██████ County Deeds, and CLEAR report indicated subject and his relatives had income and assets during the period in question.

During part of the alleged over-issuance period, from March 11, 2014 through July 11, 2014, Respondent was issued \$████ per month of Food Assistance Program (FAP) benefits. Department's Exhibit A pages 112 & 113. That amount of Food Assistance Program (FAP) benefits only appears as the issuance for a benefit group of 4, in RFT 260 Food Assistance Issuance Tables that were in effect November 1, 2013 to September 30, 2014. The Department's allegation that Respondent received Food Assistance for a household of 3, cannot be correct or accurate.

The Department submitted no over-issuance budgets showing how many people were in the benefit group during specific months of the alleged over-issuance period or

showing how much alleged unreported income was being received by the group during those months.

The Department has failed to meet its burden of submitting sufficient clear and convincing evidence to establish that Respondent committed an Intentional Program Violation (IPV).

The Department has failed to meet its burden of submitting sufficient credible and accurate evidence to establish that Respondent received an over-issuance of Food Assistance Program (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, finds that the Department **HAS NOT** established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

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 NOT** established that Respondent received an over-issuance of Food Assistance Program (FAP) benefits.

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

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]