



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 12, 2016
MAHS Docket No.: 16-010001
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 October 25, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

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. On, April 18, 2012, [REDACTED], date of birth [REDACTED] SSN ending in [REDACTED] submitted an electronic Assistance Application (DHHS-1171) for Food Assistance

Program (FAP) and Child Development and Care (CDC) benefits. She listed herself as homeless and gave a mailing address on [REDACTED]. She listed [REDACTED] date of birth [REDACTED] as the only other member of her household. She reported no shelter expenses and no earned income. Department Exhibit A pages 12-28.

2. On November 5, 2012, [REDACTED], date of birth [REDACTED], SSN ending in [REDACTED] submitted an electronic Assistance Application (DHHS-1171) for Food Assistance Program (FAP) Child Development and Care (CDC) and Family Independence Program (FIP) benefits. She listed herself as homeless and gave a mailing address of [REDACTED]. She listed [REDACTED] date of birth [REDACTED], as the only other member of her household. She reported employment, a rent obligation, and identified [REDACTED] as her child care provider who resided at the [REDACTED] address. Department Exhibit A pages 29-63.
3. On January 5, 2013, the Department issued Respondent \$ [REDACTED] of Food Assistance Program (FAP) benefits. This amount is inconsistent with Respondent's November 5, 2012, application. Other evidence in the record shows this FAP issuance was based on a benefit group of 5. There is no evidence in this record which shows, or explains, when and why the Department changed Respondent's FAP benefit group. Department Exhibit A pages 121.
4. On January 16, 2013, [REDACTED], SSN ending in [REDACTED], residing at [REDACTED], began employment with [REDACTED]. This [REDACTED] is not the Respondent.
5. On April 1, 2013, Respondent's Food Assistance Program (FAP) benefit was reduced from \$ [REDACTED] per month, to \$ [REDACTED] per month. There is no evidence in this record which shows, or explains, why the Department changed Respondent's FAP benefit amount.
6. On April 1, 2013, the Department alleges an over-issuance period begins due to Respondent's intentional failure to report her mother's earned income.
7. On July 1, 2013, the Department alleges the over-issuance period caused by the intentional failure to report Respondent's mother's earned income, ended. The FAP over-issuance budgets submitted by the Department for April 2013 through July 2013 all show: a benefit group of 5; older [REDACTED] earned income as the only income for the group; and shelter expenses that include the full heat and utility standard but no rent or mortgage payment.
8. On July 16, 2013, case comments, for Respondent's case, state that the wage match run on July 15, 2013. For 1st quarter of 2013 contained the wrong earnings amount. Department's Exhibit A page 110.

9. On September 18, 2013, [REDACTED], date of birth [REDACTED], submitted an electronic Assistance Application (DHHS-1171) for Food Assistance Program (FAP) and Family Independence Program (FIP) benefits. She listed [REDACTED] as her residence. [REDACTED] listed her household as being: herself, [REDACTED] (Respondent) date of birth [REDACTED], SSN ending in [REDACTED]; [REDACTED] date of birth [REDACTED]; [REDACTED] date of birth [REDACTED]; [REDACTED] date of birth [REDACTED], SSN ending in [REDACTED]; and [REDACTED] date of birth [REDACTED]. The relationships listings describe older [REDACTED] as mother of [REDACTED] age [REDACTED], younger [REDACTED] age [REDACTED], and [REDACTED] age [REDACTED]. Department Exhibit A pages 64-106.
10. On October 1, 2013, Respondent's Food Assistance Program (FAP) benefit was reduced from \$ [REDACTED] per month, to \$ [REDACTED] per month. There is no evidence in this record which shows, or explains, why the Department changed Respondent's FAP benefit amount. Department Exhibit A page 120.
11. On November 1, 2013, Respondent's Food Assistance Program (FAP) benefit was reduced from \$ [REDACTED] per month, to \$ [REDACTED] per month. That benefit amount stayed consistent through July 2014. There is no evidence in this record which shows, or explains, why the Department changed Respondent's FAP benefit amount. Department Exhibit A page 120.
12. On January 22, 2014, [REDACTED] began employment with [REDACTED].
13. On April 1, 2014, the Department alleges an over-issuance period begins due to Respondent's intentional failure to report her sister, [REDACTED], earned income.
14. On August 1, 2014, Respondent's Food Assistance Program (FAP) benefit was increased from \$ [REDACTED] per month to \$ [REDACTED] per month. There is no evidence in this record which shows, or explains, why the Department changed Respondent's FAP benefit amount. Department Exhibit A page 123.
15. On September 1, 2014, the Department alleges the over-issuance period due to the intentional failure to report [REDACTED] income, ended. The FAP over-issuance budgets submitted by the Department for April 2014 through July 2014 all show: a benefit group of 4; older [REDACTED] earned income as the total earned income of the group; that the required 20% disregard of older [REDACTED] reported income was not applied in calculating the over-issuance amount; that [REDACTED] earned income was considered unreported earned income; and the group had no shelter expenses at all. The FAP over-issuance budgets submitted by the Department for August and September 2014 all show: a benefit group of 4; older [REDACTED] earned income as the total earned income of the group; that the required 20% disregard of older [REDACTED] reported income was not applied in calculating the over-issuance amount; that [REDACTED] earned income was considered unreported earned income; and the group was allowed the heat and utility standard but no rent or mortgage expense.

16. A February 20, 2015, Fraud Investigation Request incorrectly states “Client applied for fap benefits for 5 people 04/2012.” Department Exhibit A page 112. The information contained in Respondent’s April 2012 application are given as finding of fact 1, above.
17. The Department has not met its clear and convincing evidence burden on the issue of whether Respondent committed an Intentional Program Violation.
18. The Department has not met its burden of submitting sufficient evidence to show that an accurately calculated over-issuance occurred.

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.

The Department alleges that Respondent received a \$ [REDACTED] Food Assistance Program (FAP) over-issuance between April 1, 2013 and July 31, 2013 and a \$ [REDACTED] Food Assistance Program (FAP) over-issuance between April 1, 2014 and September 30, 2014 that were caused by an Intentional Program Violation (IPV). The Department alleges that Respondent's IPV is subject's failure to report income and/or employment at [REDACTED] by her mother and at [REDACTED] by her sister.

The Department presented an Assistance Application (DHS-1171) dated November 5, 2012 that Respondent submitted to the Department prior to the alleged OI period. The application was Food Assistance Program (FAP), Child Development and Care (CDC) and Family Independence Program (FIP) benefits. Respondent listed herself ([REDACTED], date of birth [REDACTED], SSN ending in [REDACTED]) and her son [REDACTED] date of birth [REDACTED], as the only members of her household. The application stated Respondent was homeless and gave a mailing address of [REDACTED]. Respondent reported she was employed and identified [REDACTED] as her child care provider, and as residing at the [REDACTED] address. Department Exhibit A pages 29-63.

The Department also submitted Respondent's Food Assistance Program (FAP) issuance record. It shows that Respondent was issued ongoing Food Assistance Program (FAP) benefits of \$ [REDACTED] per month in January, February and March 2013. The record indicates that for April 1-30, 2013 Respondent was issued an initial FAP benefit of \$ [REDACTED]. She was then issued ongoing FAP benefits of \$ [REDACTED] per month in May, June, July, August and September 2013. Department Exhibit A pages 120-122.

The November 5, 2012 application for 2 people which Respondent submitted changed into a Food Assistance Program (FAP) benefit group of 5 by January 2013. The over-issuance budgets submitted for April through July 2013 show: a group size of 5; the full heat and utility standard; no rent or mortgage expense; and the earned income of older [REDACTED] as the only income for the group. That is not consistent with Respondent's November 5, 2012 application which stated she had earned income and paid \$ [REDACTED] per month rent.

The Department submitted parts of Respondent's FAP issuance record. Numerous changes were made in Respondent's FAP eligibility during the period from January 2013 through January 2015. The Department has provided no evidence or explanation for the reason for those changes.

The Department submitted Respondent's case history as of March 30, 2016 (Department's Exhibit A pages 107 & 108). The list of persons who were a part of Respondent's group is on page 108. Respondent's November 5, 2012 application listed her sister [REDACTED] as a resident at the same address. Neither [REDACTED] nor her child are shown on page 108.

The evidence submitted by the Department in this case is incomplete and inconsistent. This record does not constitute clear and convincing evidence that Respondent committed an Intentional Program Violation.

The incomplete and inconsistent evidence submitted by the Department in this case raises questions regarding the accuracy of the over-issuance budgets. Specifically regarding group composition and size, group income, and shelter expenses. The Department has presented no evidence which shows the over-issuance budgets are correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has failed to submit sufficient, credible, clear and convincing evidence which shows that Respondent committed an Intentional Program Violation (IPV).

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has failed to submit sufficient, accurate, evidence which shows that Respondent received a Food Assistance Program (FAP) over-issuance.

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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]