



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.: 16-010700
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 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 and Child Development and Care (CDC) 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 [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 FAP program benefits.
3. Respondent received FAP benefits issued by the Department as a simplified reporting (SR) group.
4. Respondent was aware of the responsibility to report income that exceeded the SR limit (Exhibit A, pp. 41, 44, 46, 49, 65, 67, 72, 75, 78).
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period concerning FAP (the FAP fraud period) is [REDACTED].
7. During the 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.
8. The Department alleges that Respondent received a \$ [REDACTED] FAP OI.
9. This was Respondent's first alleged FAP IPV.
10. The Department alleges that between [REDACTED], and [REDACTED], (the CDC fraud period), Respondent was issued \$ [REDACTED] in CDC benefits by the State of Michigan but was entitled to \$ [REDACTED] in such benefits during this time period.
11. The Department alleges that Respondent received a \$ [REDACTED] CDC OI.
12. 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 Department alleged that Respondent was overissued FAP and CDC benefits. At the hearing, the Department clarified that it was seeking to establish an IPV through administrative hearing with respect to only the FAP program, not the CDC program. Accordingly, the IPV issue, and any resulting disqualification, is limited to the FAP program. OI for both programs is addressed.

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 Child Development and Care (CDC) program is established by Titles IV-A, IV-E and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

FAP Intentional Program Violation, Disqualification and OI

Effective October 1, 2014, 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 (January 2016), p. 5.

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 (January 2016), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV concerning her FAP benefits because she intentionally misrepresented her income and failed to report when her income exceeded the income limit for SR groups resulting in an overissuance of FAP benefits. Employment income is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 2-6. FAP recipients who are simplified reporters are required to report income only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200 (December 2013), p. 1. No other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine its total gross income at the end of that month, and if the total gross income exceeds the group's SR income limit based on group size, the group must report this change to the Department by the 10th day of the following month. BAM 200, p. 1. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6.

In this case, Respondent was notified in Notices of Case Action sent to her on [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED], that she was required to report when her gross income exceeded the SR income limit for her three-person FAP group size (Exhibit A, pp. 41, 44, 46, 49, 65, 67, 72, 75, 78). Before [REDACTED], the SR limit for a FAP group with three members was \$ [REDACTED] RFT 250 (October 2012), p. 1. Effective [REDACTED], the SR limit for a FAP group of three was \$ [REDACTED] RFT 250 (October 2013), p. 1. This is consistent with the SR limits identified in the Notices. Therefore, Respondent was properly advised of her reporting obligations.

The Department alleges that Respondent failed to report her employment with [REDACTED] (Employer) and did not comply with her SR reporting obligations because her household income exceeded the SR limit beginning [REDACTED]. The Department calculated that, when Respondent's gross income from Employer, plus income the household

received from child support and one son's Supplemental Security Income (SSI) benefits, Respondent's household had gross monthly income of \$ [REDACTED] in [REDACTED]; \$ [REDACTED] in [REDACTED]; \$ [REDACTED] in [REDACTED]; \$ [REDACTED] in [REDACTED]; and \$ [REDACTED] in [REDACTED] Exhibit A, p. 92). The Department argues that, because Respondent's household's gross income exceeded the SR income limit beginning [REDACTED], Respondent was required to report the increase to the Department by [REDACTED], to affect FAP benefits for November 2013 ongoing.

While a review of Respondent's income from Employer and the consolidated inquiry showing the child support Respondent received shows that the Department accurately calculated the gross earned income and gross unearned income from child support, the Department did not accurately identify Respondent's household's SSI income. A review of the State On-Line Query (SOLQ) for Respondent's son shows that beginning [REDACTED], \$ [REDACTED] in gross payable monthly SSI benefits was issued monthly and \$ [REDACTED] was recovered by the Social Security Administration (SSA) for advance payment or overpayment (Exhibit A, p. 87). Department policy provides that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are **not** part of gross income and are excluded in the calculation of income from that source unless the amount withheld by SSA was due to intentional program violation. BEM 500 (January 2014), p. 5.

In this case, no evidence was presented that the \$ [REDACTED] withheld from Respondent's son's SSI payment was due to IPV. Therefore, the \$ [REDACTED] should not have included in the calculation of the gross SSI benefits received by the household. When this \$ [REDACTED] is excluded from the calculation of Respondent's household's unearned income, Respondent's household's income did not exceed the applicable SR income limit until [REDACTED]. Income over the SR limit beginning in [REDACTED] would have to be reported by [REDACTED], to affect [REDACTED] benefits. Therefore, the Department has failed to establish a FAP OI for [REDACTED] or [REDACTED]. Further, because the Department did not present any evidence showing that the SSA withholding for overpayment ended, the unearned income figure used in the [REDACTED] FAP OI budget is inaccurate. Therefore, the Department has failed to establish an OI for [REDACTED].

Because an IPV based on unreported income requires an OI of benefits and because the Department cannot establish the FAP OI in this case, the Department cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP case. BAM 720, p. 1. Because the Department cannot establish a FAP IPV, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12, 15-16.

CDC OI

The Department alleges that, due to Respondent's failure to timely report income exceeding her SR limit, she received CDC benefits she was not eligible to receive. 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 CDC 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.

The Department contends that Respondent was not income eligible for CDC benefits during the CDC fraud period. Eligibility for an income-eligible CDC recipient ends when the family has excess income. BEM 703 (July 2013), pp. 16-17). For a CDC group consisting of three group members (Respondent and her two minor children), the CDC monthly income limit during the CDC fraud period was \$ [REDACTED] RFT 270 (October 2011 and December 2013), p. 1.

A review of Respondent's household's monthly income during the CDC fraud period shows that, even if this income was reduced by the \$ [REDACTED] withheld by SSA, the household's monthly income exceeded the \$ [REDACTED] income limit for CDC eligibility (Exhibit A, pp. 92, 80-81, 87, 88-90). The Department presented a benefit summary inquiry showing that during the CDC fraud period \$ [REDACTED] in CDC benefits were issued by the Department on Respondent's behalf (Exhibit A, p. 122). Because Respondent was not eligible for these benefits, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in CDC benefits issued to her during the CDC fraud period.

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 a FAP IPV during the FAP Fraud Period.
2. Respondent **did not** receive a FAP OI during the FAP Fraud Period.
3. Respondent **did** receive a CDC OI totaling \$ [REDACTED] during the CDC Fraud Period.

The Department is ORDERED to (i) delete the FAP OI and cease any recoupment/collection procedures for the FAP OI and (ii) initiate recoupment/collection procedures in accordance with Department policy for the CDC OI amount of \$ [REDACTED] less any amounts already recouped/collected.



Alice C. Elkin

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]