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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]
[REDACTED]
[REDACTED]

Date Mailed: December 19, 2016
MAHS Docket No.: 16-015059
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 28, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED] (Respondent).

ISSUES

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

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 September 27, 2016, 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 report changes in income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is June 1, 2015 to November 30, 2015 (fraud period).
7. During the 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 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.

Effective January 1, 2016, 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), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

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 (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.

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 alleges that Respondent committed an IPV of his FAP benefits because he failed to report his household employment income as required, which resulted in him exceeded the simplified reporting limits.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2013), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

Note: Changes known to the Department must be acted on even though the client is required to report only if the group's total gross income exceeds the SR income limit for their group size. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 2. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 2.

Respondent's applicable group size in this case is three. RFT 250 indicates that the simplified reporting income limit for a group size of three is [REDACTED] effective October 1, 2014, and [REDACTED] effective October 1, 2015. RFT 250 (October 2014 and October 2015), p. 1.

First, the Department presented Respondent's application dated December 12, 2012, to show that he acknowledged his responsibility to report changes as required. Exhibit A, pp. 10-33.

Second, the Department presented Respondent's semi-annual contact report (contact report) dated April 29, 2015, which was submitted just prior to the alleged fraud period. Exhibit A, pp. 33-34. In the contact report, the form indicated that the household's monthly gross earned income (before taxes) used in his FAP budget is [REDACTED] Exhibit A, p. 35. Moreover, Respondent marked "no" to the question in the contact report that

asked if the household's gross earned income (including earnings from self-employment) changed by more than [REDACTED] from the amount above, even though the Department argued that his household income exceeded the [REDACTED] amount. Exhibit A, pp. 1, 4, and 35.

Third, the Department presented Respondent's employment verification to show that his household income exceeded the limits during the alleged fraud period. Exhibit A, pp. 1, 4, and 36-41.

At the hearing, Respondent argued and/or asserted the following: (i) he did not intend commit an IPV of his FAP benefits; (ii) from April 2015 to May 2015, he went from salary to an hourly wage, and he was paid for mileage for driving, but that was not reflected in his employment verification; (iii) he is not sure if he was paid [REDACTED] on May 1, 2015, as shown in the employment verification (Exhibit A, p. 37); (iv) he does remember speaking to his caseworker about his reporting obligations, but forgot what he was told by his caseworker because it was over a year ago; (v) he must have reported something to the Department because his FAP issuance decreased effective September 2015; and (vi) he thought that the Department had already been recouping the OI sought in this case.

In response, the Department testified that it was administratively recouping from his FAP benefits, but that it was for the period of February 1, 2016 to May 31, 2016, based on client and/or agency error, which is a different OI period than sought in this case.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department argued that Respondent failed to report the household income exceeded the amount stated in Section 4 of the contact report. Exhibit A, pp. 4 and 35. However, the undersigned disagrees. In the contact report received in April of 2015, the form indicated that the household's monthly gross earned income (before taxes) used in his FAP budget is [REDACTED] Exhibit A, p. 35. Moreover, Respondent marked "no" to the question in the contact report that asked if the household's gross earned income (including earnings from self-employment) changed by more than [REDACTED] from the amount above. Exhibit A, pp. 1, 4, and 35. After reviewing the contact report and employment verification, the undersigned finds that Respondent properly reported that the earned income did not change by more than [REDACTED] Respondent's employment verification showed that he received a gross income of [REDACTED] for April 2015. See Exhibit A, p. 37. Yes, this amount is above the [REDACTED] that the Department had been budgeting, but the question specifically asked if the amount changed by more than [REDACTED], which it did not. Therefore, Respondent properly answered the question and the Department's argument was incorrect that the income changed by more than [REDACTED]

Accordingly, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program

benefits or eligibility, the Department has failed to establish 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; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the evidence established that no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

In this case, the Department failed to satisfy its burden of showing that a client error OI occurred. Policy states that the only client error OI related to SR that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, pp. 5 -6 (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). The undersigned finds that neither occurred in this instance. The undersigned reviewed Respondent's employment verification and found that his gross income did not exceed the SR income limits for a majority of the OI periods. For example, RFT 250 indicates that the simplified reporting income limit for a group size of three is ██████ effective October 1, 2014. RFT 250 (October 2014), p. 1. Respondent's gross income for June 2015 was ██████, which was below the SR limit. Exhibit A, p. 37. Also, for September 2015, Respondent's gross income was ██████, which again, was below the limit. Exhibit A, p. 38. This trend continued with Respondent's income being below the limits in a majority of the alleged OI periods. As such, the undersigned finds that the Department failed to

establish by a preponderance of evidence that Respondent's income exceeded the group's SR income limit during the entire alleged OI period.

Accordingly, the undersigned finds that the Department failed to satisfy its burden of showing that a client error OI related to Respondent's SR case is present. See BAM 200, pp. 1-6 and BAM 715, p. 5 (Simplified Reporting). Therefore, the Department is ordered to delete the OI of FAP benefits in the amount of [REDACTED] for the period of June 1, 2015 to November 30, 2015 and cease any recoupment action.

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 an IPV.
2. Respondent **did not** receive an OI of FAP program benefits in the amount of [REDACTED]

The Department is **ORDERED** to delete the OI and cease any recoupment action.

EF/



Eric J. Feldman

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]

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[REDACTED]

CC: [REDACTED]
[REDACTED]