



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: October 7, 2016
MAHS Docket No.: 16-006465
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 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 [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 report 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 are two periods: period #1, [REDACTED] **and** period #2, [REDACTED]; (fraud periods). Exhibit A, p. 4.
7. During fraud period #1, 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. The Department alleges the Respondent received an OI of \$ [REDACTED]
8. During fraud period #2, 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. The Department alleges the Respondent received an OI of \$ [REDACTED]
9. During the two fraud periods, the Respondent received an OI which totaled \$ [REDACTED] for the periods in question.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] for period # 1 and \$ [REDACTED] for period #.2. Exhibit A, p. 4.
11. This was Respondent's **first** alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. 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 (1/1/16), p. 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 (May 2014), p. 12-13; BAM 720 (July 2013), 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 the Respondent committed an IPV of her FAP benefits because she failed to report her income to the Department when she began employment after she applied for FAP benefits. The Department further alleges that Respondent's failure to report income from employment caused an OI of the Respondent's FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 1, 2013), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.
- Unearned income:
 - Starting or stopping a source of unearned income.
 - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 7.

Here, the Department presented Respondent's application for FAP filed on [REDACTED] as well as applications dated [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED]; all of which failed to report any income from employment. Based upon a Wage Match Inquiry, the Respondent was employed beginning [REDACTED], and then from [REDACTED].

The Respondent completed a redetermination for [REDACTED] at which time, while she was employed, failed to report her employment. Exhibit A, pp. 29 and 31. In a second redetermination completed in [REDACTED], the Respondent once again reported that she received no income during that period. Exhibit A, p. 105. In addition, throughout much of the OI period, the Respondent was employed by two companies: [REDACTED] and another staffing company. Essentially, at no time did the Respondent report any earnings from employment throughout the period.

The Department's evidence demonstrated that through Wage Match information that the Respondent received income from [REDACTED], and [REDACTED], which caused her to be ineligible to receive FAP benefits and that she also received more FAP benefits than she was entitled to receive. A review of the FAP budgets presented by the Department was made at the hearing; and for all periods, the Respondent received OIs due to failure to report income. The Respondent's employment was confirmed by both employers. See Exhibit A, pp. 105 and 108.

Based upon the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. The Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented her income during the fraud periods. Specifically, the Respondent failed to report that she had any income after her numerous applications and two redeterminations. This evidence is persuasive evidence that Respondent committed an IPV of her FAP benefits because she intentionally withheld or misrepresented her income information in the form of employment income for the purpose of maintaining her FAP benefits. In summary, there was clear and convincing evidence that Respondent was aware of her responsibility to report her income and that she intentionally withheld or misrepresented this information for the purposes of establishing, maintaining, increasing or preventing reduction of her FAP benefits or eligibility.

Disqualification

A client who is found to have committed an FAP 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 satisfied its burden of showing that the Respondent committed an IPV concerning FAP benefits. The Department presented evidence that this was the Respondent's first IPV; therefore, Respondent is subject to a disqualification under the FAP program of 12 months. BAM 720, p.16.

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 the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

As stated previously, the Department has established that Respondent committed an IPV of her FAP. Moreover, it is found that the Department applied the appropriate OI begin date for both periods, namely [REDACTED]. See BAM 720, p. 7 and Exhibit A, pp. 105 and 108.

In this case, the Department presented OI budgets for the periods in question, which were examined at the hearing and were determined to be correct. The budgets included Respondent's income that was not previously budgeted because it was not reported by the Respondent and is based upon verification from both her employers. Thus, the Department is entitled to recoup \$ [REDACTED] for the period [REDACTED]; and for the period [REDACTED] the Department is entitled to recoup \$ [REDACTED]. The total OI subject to recoupment is \$ [REDACTED].

DECISION AND ORDER

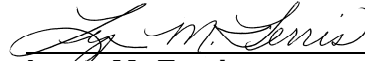
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED].

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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

LMF/jaf



Lynn M. Ferris

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]

Petitioner

[REDACTED]

Respondent

[REDACTED]

Via email

[REDACTED]