



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 26, 2016
MAHS Docket No.: 16-006592
Agency No.: [REDACTED]
Petitioner: OIG
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 [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 changes in group composition.
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 [REDACTED], (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 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 (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 her FAP benefits because of her alleged failure to accurately report group composition. The Department alleged that Respondent was claiming her daughter and son on her FAP case, when in fact they were not in her home.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (March 2013), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home. BAM 105, p. 7.

Additionally, parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (November 2012), p. 1.

First, the Department presented Respondent's online applications dated [REDACTED], and [REDACTED] which were submitted during the alleged fraud period. Exhibit A, pp. 34-115. In the application dated [REDACTED], Respondent applied for FAP benefits for herself and her children, even though the Department argued that the children did not reside in the home. Exhibit A, pp. 4, 10, and 40-41. However, in the application dated [REDACTED], Respondent applied for FAP benefits and only reported that her daughter resided with her and made no mention of her son. See Exhibit A, p. 85.

Second, the OIG agent testified as to the following: (i) information obtained from [REDACTED] County Child Protective Services (CPS) shows that the daughter was removed on [REDACTED], by CPS and was released to her father, [REDACTED]; (ii) Respondent's son was placed into guardianship the same time; (iii) Respondent then applied for benefits for herself and two children (as shown above), despite not having them in her care and custody; (iv) on [REDACTED], Respondent entered a plea of admission as well as a preponderance of evidence and there was statutory grounds to exercise jurisdiction of the children; (v) contact was made with [REDACTED] and [REDACTED] and they acknowledged that the daughter was attending elementary school in [REDACTED] MI and that she had not been in the care of Respondent for several years; (vi) [REDACTED] indicated that Respondent lived by herself at her residential address; (vii) the OIG agent spoke with Respondent in-person and confirmed her identify in late [REDACTED] in which she stated CPS/the court [REDACTED] and [REDACTED] were wrong, she did see her children periodically; it was incorrect that she misrepresented her group composition in the application; and she did not have any documentation to support her claim; and (viii) when the OIG agent (hereinafter referred to as "the

Department”) attempted to say there is a difference to Respondent between custody vs. visitation of the children, she was adamant that she did nothing wrong.

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 was claiming her daughter and son on her FAP case when in fact they were not in her home. The undersigned finds that the Department failed to establish its burden of showing that the daughter and son did not reside with Respondent during the alleged fraud period. For example, the Department testified that the daughter was removed from the home by CPS; and the son was placed into guardianship. The Department did not present any court documents (i.e., Order of Adjudication or guardianship information) to support this argument. Another example, the Department testified that he spoke with the daughter’s father, who was placed in his care, and indicated that she was attending an elementary school in [REDACTED] MI. However, the Department did not present any evidence of school records showing that the daughter is attending that elementary school. The Department also testified that it spoke to Respondent in late [REDACTED]. But again, the Department did not provide any evidence documenting its conversation with Respondent or any documentation to support the Department’s claim.

In summary, the Department failed to present any documentation to corroborate its claim that the children did not reside with the Respondent (i.e., Front-End Eligibility (FEE) Report, court documents, school records, etc.). As such, the Department failed to satisfy its burden of showing that the children did not reside with Respondent during the alleged fraud period. Because the Department failed to satisfy its burden of showing that the children did not reside with Respondent during the alleged fraud period, it failed to show by clear and convincing evidence that Respondent intentionally withheld her group composition information for the purpose of maintaining Michigan FAP 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 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

When a client group receives more benefits than they are 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.

In the present case, the Department alleged that Respondent failed to accurately report group composition when she was claiming her children on her FAP case when in fact they lived elsewhere. As such, the Department argued that Respondent received an OI of FAP benefits. However, as stated in the previous analysis, the Department failed to establish its burden of showing that the children did not reside with Respondent during the alleged OI period. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of FAP program benefits in the amount of \$[REDACTED] for the period of [REDACTED]. Accordingly, the Department is ordered to delete the OI 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.

EJF/jaf



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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]

Via email

[REDACTED]