



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.: 16-009061
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 appeared and represented herself.

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 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 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 (fraud period) is [REDACTED].
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 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.

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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her 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 concerning her FAP benefits because she intentionally withheld information concerning her husband's income in order to receive or maintain FAP benefits from the State of Michigan. 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 not simplified reporters are required to report (i) starting or stopping employment, (ii) changing employers, (iii) change in rate of pay, and (iv) change in work hours of more than five hours per week that is expected to continue for more than one month. BAM 105 (January 2014 and October 2014), pp. 9-11.

In support of its IPV case against Respondent, the Department presented (i) applications Respondent submitted to the Department on [REDACTED], and [REDACTED], (Exhibit A, pp. 12-24, 25-42); (ii) a redetermination she submitted to the Department on [REDACTED], (Exhibit A, pp. 43-48); (iii) a printout from the Department's system showing Respondent's worker's case comments (Exhibit A, pp 49-52); (iv) a printout from the Work Number, a Department-accessible database in which employers voluntarily report employee employment data, showing Respondent's husband's employment with [REDACTED] (Exhibit A, pp. 54-55); (v) a benefit summary inquiry showing that Respondent received FAP benefits during the fraud period (Exhibit A, p. 56); and (vi) and FAP OI budgets for each month during the fraud period showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in determining her FAP eligibility and allotment at the time of issuance (Exhibit A, pp. 57-63).

The evidence shows that Respondent's husband was employed between [REDACTED] [REDACTED]. Despite her husband having employment income and receiving paychecks, dated [REDACTED], and [REDACTED], Respondent did not report his income in the Redetermination she submitted to the Department on [REDACTED]. Respondent explained at the hearing that her husband's employment with [REDACTED] involved day labor, with work based on availability. She testified that she had notified her worker of her husband's employment and, per her worker's request, had submitted copies of paystubs directly to the Department. However, a review of the worker's casenotes supports the Department's position that Respondent did not report her husband's employment. Rather, the worker's notes from [REDACTED] show that, in connection with a Medicaid redetermination, Respondent reported her income but not her husband's: the husband's income was uncovered through a consolidated inquiry. This evidence, coupled with the evidence that Respondent failed to disclose her husband's income in the [REDACTED], application, supports the Department's position that Respondent's husband's income was unreported.

Because Respondent had unreported employment income, there was clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of her FAP benefits. Under these circumstances, the Department has established that Respondent committed an IPV concerning her FAP case.

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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first IPV, she is subject to a one-year disqualification from receipt of FAP benefits.

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 a FAP 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.

In this case, the Department alleges that Respondent received FAP benefits totaling \$[REDACTED] during the fraud period but was eligible for only \$[REDACTED] in FAP benefits during this period once her husband's income was budgeted.

To establish the OI amount, the Department presented FAP OI budgets for each month during the fraud period to show the FAP benefits Respondent was eligible to receive if her husband's income had been included in the calculation of the household's FAP eligibility for each month. A review of the FAP OI budgets shows that the Department considered the 10-day reporting period from receipt of the first paycheck from [REDACTED] on [REDACTED] [REDACTED] the 10-day processing period and the 12-day negative action period when determining to begin budgeting the earned income [REDACTED]. BAM 105, p. 7; BAM 720, p. 7. A review of each of the budgets also shows that the Department properly considered Respondent's actual income from the employer. BAM 720, p. 10. Because Respondent did not timely report her husband's income, the 20% earned income deduction was not applied to his income in calculating FAP eligibility. BAM 720, p. 10.

The benefit summary inquiry shows that from [REDACTED], Respondent received a total of \$[REDACTED] in FAP benefits. A review of the FAP OI budgets shows that, for the [REDACTED] FAP OI budget, the Department budgeted income for both Respondent and her husband as unreported. Although the Department contended that Respondent had not timely reported her husband's income for

██████████, there was no evidence presented concerning Respondent's income, when it was reported, or the amount of income she received. Accordingly, the Department failed to satisfy its burden of showing that it calculated the ██████████ FAP OI in accordance with Department policy.

A review of the ██████████ and ██████████ FAP OI budgets show both reported employment income for Respondent and unreported employment income for Respondent's husband. The budgets show the correct calculation of Respondent's husband's income for those months. When Respondent's husband's employment income from ██████████ and ██████████ is considered in the calculation of Respondent's household's FAP benefits, Respondent was overissued FAP benefits of \$██████ in ██████████ and \$██████ in ██████████, or a total of \$██████ in FAP during those months. Therefore, the Department has established that Respondent was overissued \$██████ in FAP benefits during the fraud period.

Thus, the Department is entitled to recoup and/or collect from Respondent \$██████ in FAP benefits issued to her during the 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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$██████ from the FAP program for ██████████.

The Department is ORDERED to reduce the FAP OI to \$██████ and initiate recoupment/collection procedures in accordance with Department policy for the reduced amount of \$██████ less any amounts already recouped/collected.

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

ACE/tlf



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]