



RICK SNYDER
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 6, 2016
MAHS Docket No.: 16-009200
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 14, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Also, Regulation Agent [REDACTED] observed the hearing, but did not provide any testimony.

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 March 17, 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 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 May 1, 2014 to February 28, 2015 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ ██████.
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 that his son, [REDACTED], was no longer a member of the household, which caused an overissuance of FAP benefits.

Other changes must be reported within 10 days after the client is aware of them. BAM 105 (April 2014), p. 9. These include, but are not limited to, changes in persons in the home. BAM 105, p. 9.

First, the Department presented Respondent's online application dated June 4, 2014, and his redetermination dated June 16, 2014, which were both submitted during the alleged fraud period. Exhibit A, pp. 10-50. In both documents, Respondent reported that his son, [REDACTED], was a member of the household, even though the Department argued that his son was not in the household at the time. Exhibit A, pp. 9, 14, and 47.

Second, the Department presented evidence showing that the son did not reside with Respondent as follows: (i) e-mail correspondence from a Department [REDACTED] confirming that the son was placed with [REDACTED]" (possible foster care placement) from March 20, 2014 to June 4, 2014; (ii) e-mail correspondence from [REDACTED] that the [REDACTED] was placed with them from June 4, 2014 to December 3, 2014; and (iii) Respondent's "Case Comments – Summary" (case comments) indicated that Respondent's son resided with his mother. Exhibit A, pp. 51-54.

Third, the Department presented the OIG Investigation Report, which indicated that the agent interviewed Respondent on February 16, 2016, and he reported that his son was placed in a facility, but was unable to remember the specific dates, or the name of the facility. Exhibit A, p. 3.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP benefits.

First, the evidence established that the son did not reside with his father (Respondent) during the fraud period. See Exhibit A, pp. 51-54 (e-mail correspondence and case comments).

Second, the Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented his household composition during the fraud

period. In the present case, Respondent reported that his son was a member of the household in his application and redetermination, even though the evidence established that the son was not a member of the household at the time. Exhibit A, pp. 9, 14, 47, and 51-54. This is persuasive evidence that Respondent committed an IPV of his FAP benefits because he misrepresented his group composition for the purpose of maintaining his FAP eligibility. In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report that his son was not a member of the household and that he intentionally withheld or misrepresented this information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is 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.

As stated previously, the Department has established that Respondent committed an IPV of his FAP benefits. Moreover, it is found that the Department applied the appropriate OI begin date of May 1, 2014. See BAM 720, p. 7 and Exhibit A, pp. 3 and 51.

In this case, the Department presented OI budgets from May 2014 to October 2014, and December 2014 to February 2015. See Exhibit A, pp. 57-66. The budgets decreased the group size from three to two by excluding Respondent's son from the household. See Exhibit A, pp. 57-66. It should be noted that the group size was one for

June 2014, July 2014, and September 2014 because the Department indicated that Respondent was a disqualified member for these months. Exhibit A, pp. 59, 60, and 62. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup ██████ of FAP benefits it issued for May 1, 2014 to October 31, 2014, and December 1, 2014 to February 28, 2015.

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 FAP benefits in the amount of ██████

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of ██████ in accordance with Department policy, less any amount already recouped and/or collected.

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

EF/tm



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]
[REDACTED]
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CC: [REDACTED]
[REDACTED]