



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: November 17, 2016
MAHS Docket No.: 16-009435
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 17, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear at the hearing; and it was held in the 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

Did the Respondent commit an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and thereby receive an Over issuance (OI) that the Department is entitled to recoup/collect?

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 22, 2016, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV.
2. The OIG has requested that the Respondent be disqualified from receiving program benefits.

3. The Respondent was a recipient of FAP benefits issued by the Department.
4. The Respondent was aware of the responsibility to truthfully report her circumstances to the Department, and on the assistance applications in evidence, the Respondent did truthfully report her circumstances to the Department. The Assistance Applications in evidence do not inform the Respondent of her responsibility to report changes in circumstances within 10 days to the Department.
5. The 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 OI period is September 1, 2005 to June 30, 2006.
7. During the OI period, the Respondent was issued \$[REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that the Respondent was entitled to \$[REDACTED] in such benefits during this time period.
8. The Department alleges that the Respondent received an OI in FAP benefits in the amount of \$[REDACTED]
9. This was the Respondent's first alleged IPV.
10. A notice of hearing was mailed to the 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:

- 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 (2016), pp. 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 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.

Furthermore, the policy at the time of the alleged IPV provided that:

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney, **or**
- refer suspected IPV cases that meet criteria for administrative hearings to Administrative Hearings, **or**
- return non-IPV cases to the RS. Program Administrative Manual (PAM) 720 (2004).

It is well established procedure in IPV hearings that the Administrative Law Judge decide the case based on the policy in effect at the time the hearing was requested. This hearing was requested on March 22, 2016, almost 10 years after the alleged IPV occurred. The evidence in the record indicates that the Regulation Agent testifying at the hearing was aware of this IPV in September 13, 2006. In this case, the Regulation Agent at the hearing was the Regulation Agent who had the case 10 years ago, and the hearing summary was not even composed for almost 10 years. Coincidentally, the Department's policy changed in January, 2016. At that time, the requirement that the OIG bring the hearing in any specified time limit at all, was removed from the policy. Shortly thereafter, the instant hearing summary was prepared for a case that is 10 years old.

When asked why it is that it took 10 years to bring the alleged IPV to hearing, the Regulation Agent present at the hearing indicated that the case had been referred to the prosecutor. When questioned further as to what happened, the Regulation Agent was not at all certain and could give no definitive answer as to why it took 10 years to bring the case to hearing. The Regulation Agent testified that the case is so old because, "It has been going back and forth with the prosecution and diversion...it's been going back and forth and one time we couldn't locate the lady." The Regulation Agent also testified that the case was sent back to recoupment. When asked what happened with that, the Regulation Agent testified that the Respondent did not respond.

It was then pointed out to the Regulation Agent that his report indicated that the Respondent's interview regarding the matter was not scheduled until three years after the alleged IPV and that the Respondent at that time said she had reported her income to her worker and gave her worker's telephone number. The Regulation Agent was asked if the Respondent's statements were investigated. The Regulation Agent indicated that they were, but that they could not verify the Respondent's statements. The Regulation Agent did not detail what attempts were made to verify the Respondent's statements.

The Regulation Agent was asked what happened with the prosecution of the case and he testified that the Prosecutor retired. When asked directly if the Respondent was prosecuted and what the result was, the Regulation Agent testified that he "believed it came back for recoupment." Yet, the policy at the time of the alleged IPV instructs that *non-IPV* cases get referred back for recoupment, according to PAM 720.

The Regulation Agent at the hearing could not testify with any specificity at all about what occurred with this case, even though it was his case from the onset in 2006. When the Respondent was interviewed, three years later, the Respondent asserted that she reported her income to her worker. The Regulation Agent testified that her statements could not be verified, but did not testify what efforts were made to verify the Respondent's statements.

This Administrative Law Judge, based on the testimony of the Regulation Agent at the hearing, that this case was referred for prosecution. There is no reliable evidence to indicate what exactly happened after the case was referred for prosecution. As such, the Administrative Law Judge concludes that the evidence is far from establishing that the case is even properly brought to hearing. The evidence does also not establish that the Respondent made any false statement on any application in evidence. Furthermore, the Respondent asserted that she reported her income to her worker and if the veracity of that statement was investigated, the results of that investigation are not included in this record. As such, the evidence does not establish, by a clear and convincing standard, that the Respondent withheld information for the purpose of maintaining program benefits or preventing a reduction in program benefits and it does therefore not establish that the Respondent committed an IPV.

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, pp. 15, 16. 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. 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 Administrative Law Judge has concluded that the Respondent has not committed an IPV. As such, the Administrative Law Judge concludes that no disqualification penalty is to be imposed.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the possibility exists that there may be a restitution order issued by the county prosecutor. Furthermore, evidence indicates that the case may have been referred to the recoupment specialist many years ago. Testimony that the recoupment specialist was unable to "locate the lady," does not prevent the Department from taking action to recoup/collect the debt. Considering the testimony given in this case, the Administrative Law Judge concludes that the evidence is insufficient to establish that the Respondent received an OI in the amount of \$ [REDACTED] that the Department is entitled to recoup/collect.

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 the Department has not established by clear and convincing evidence that the Respondent committed an IPV. No disqualification penalty is therefore imposed and no recoupment/collection action is ordered.



SH/nr

Susanne E. Harris
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]

Petitioner

[REDACTED]

Respondent

[REDACTED]