



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: December 2, 2016
MAHS Docket No.: 16-009626
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 10, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. Beginning September 13, 2009, the Department made payments to [REDACTED]. Payments continued up until May 19, 2012.

2. Beginning January 1, 2010, the Department issued Food Assistance Program (FAP) benefits to Petitioner.
3. On, July 9, 2010, Respondent was sent a Notice of Case Action (DHS-1605) which stated he was approved for Medicare Savings Program benefits and Food Assistance Program (FAP) benefits for a group of 2, himself and [REDACTED]. This indicates that Petitioner was eligible for Medicare, which means Petitioner was receiving Social Security benefits.
4. On March 23, 2012, Petitioner and [REDACTED] were sent a letter and renewal inspection report regarding [REDACTED]. The letter was addressed to [REDACTED]. The report recommended that a regular license be issued.
5. On January 30, 2013, [REDACTED] was sent a subpoena by the Department requesting earned income from January 1, 2008 to January 30, 2013.
6. March 1, 2013, [REDACTED] wrote a statement saying that: Petitioner did not work for [REDACTED]; she and Petitioner live on separated sides; and [REDACTED] is no longer operating.
7. On March 28, 2016, the Department's Office of Inspector General issued an Investigation Report, sent notice of their intended action to Respondent, and submitted this request for an Intentional Program Violation hearing.

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.

On January 30, 2013, when the Department's Office of Inspector General sent a subpoena to [REDACTED], Bridges Administration Manual (BAM) 720 Intentional Program Violation (8-1-2012) was in effect. It stated:

OIG RESPONSIBILITIES

All Programs

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.

Refer suspected IPV cases that meet criteria for IPV administrative hearings to the State Office of Administrative Hearings and Rules (SOAHR).

Return non-IPV cases to the RS.

July 31, 2014 was the end of the Department's 18 month time limit to take action on this investigation. The public record search on Petitioner submitted as evidence in this case was run on February 11, 2016. The evidence of payments made to [REDACTED] were printed on March 8, 2016. The evidence of Food Assistance Program (FAP) issuance to Petitioner was run on March 24, 2016. The Investigation Report was completed on March 28, 2016. The Department did not follow its own policy with regard to the time limit for this action.

Additionally, the July 9, 2010 Assistance Application (DHS-1171) submitted by the Department (Department Exhibit A pages 12-15) indicate that Petitioner was receiving Social Security benefits. Every version of BAM 720 since this investigation began identifies one of the three conditions necessary for a suspected Intentional Program Violation as "The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities." The Department has not submitted clear and convincing evidence that Petitioner had no impairment that limited his understanding or ability. The Department did not meet its burden of proof to establish an Intentional Program Violation.

Additionally, the over-issuance calculations submitted by the Department, do not match the evidence in the record. The sum all payments made to [REDACTED] during April 2010 (the first month of the alleged over-issuance) is \$[REDACTED]. Department's Exhibit A pages 65-69. In order to calculate the correct household income, Petitioner's Social Security benefits would be added to the daycare income. There is no evidence of Petitioner's Social Security benefits in evidence. The Budget Worksheet submitted by the Department (Department Exhibit A pages 204 & 205) states that the income for April 2010 was \$[REDACTED]. The income amounts listed for August through December 2010 lists income as [REDACTED]. The income listed for every month from January 2011 through July 2012 is a nice round [REDACTED]. There are no over-issuance budgets. The Department submitted the FAP Income Limit tables and asserts that Respondent exceeded the income limit for all the months in the alleged over-issuance period.

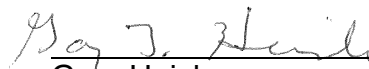
The result of an Administrative Law hearing is a legal decision. That is why the Michigan Administrative Procedures Act requires that a decision be based on competent, material and substantial evidence in the record. The Department of Health and Human Services' has the initial burden of going forward with evidence. That means they have to submit sufficient, credible evidence to support their proposed actions.

The evidence in this record: shows that the Department did not comply with policy regarding time limits to request the hearing; does not constitute clear and convincing evidence that Petitioner committed an Intentional Program Violation; and does not contain sufficient credible evidence to determine if an over-issuance occurred or not.

DECISION AND ORDER

It is **ORDERED** that the actions of the Department of Health and Human Services, in this matter, are **REVERSED**.

GH/nr



Gary Heisler
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]