



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: October 7, 2016
MAHS Docket No.: 16-010907
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 circumstances that might affect benefits or eligibility.
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 periods it is considering the fraud periods are [REDACTED]; (period #1) and [REDACTED] (period #2) (fraud periods).
7. During fraud period #1, 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. During fraud period # 2, 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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] (period #1, \$ [REDACTED] (period #2, \$ [REDACTED] Exhibit A, p.4.
10. This was Respondent's **first** alleged IPV.
11. 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 (1/1/16), p. 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 700 (February 1, 2013), p. 6; BAM 720, (February 1, 2013 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 she failed to disclose that a mandatory group member of her FAP group had been convicted of two drug-related felonies and was not eligible to receive FAP. Because the mandatory group member was included in the FAP group, the Department alleges that the Respondent received more FAP than she was otherwise entitled to receive as the FAP benefits should have been calculated based upon an FAP group of two members rather than three members.

Department policy found in BEM 203 provides:

1st Offense A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole, FIP benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative.

2nd Offense An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods **will be permanently disqualified if both offenses occurred after August 22, 1996**. BEM 203 (October 1, 2012), p. 2. (Emphasis supplied).

In this case, the Department presented evidence that the Respondent completed multiple applications and a redetermination; and for each application and/or redetermination responded “No” to the question, “Has anyone in your household been convicted of a drug-related felony occurring after [REDACTED]?” Exhibit A, pp. 19, 43, 62, and 70. In addition, the Department provided evidence that the Petitioner’s group member, who was the parent of her child and a mandatory group member, had been convicted of two drug-related felonies occurring after [REDACTED]. Exhibit A,

pp. 79-82. The Respondent was not married to the father of her child at the time of the first application and thereafter.

The Department representative also testified that she could not say for certain that the Respondent was aware of the drug-related felony convictions as they occurred prior to the first FAP application, the first being in [REDACTED]. Because the Department representative was unable to reach the Respondent, she could not determine for certain the extent of Respondent's knowledge regarding the convictions at the time of the applications/redetermination. The first application filed by the Respondent was dated [REDACTED]. Exhibit A, p. 12. Their child who also resided in the home was born on [REDACTED]. Exhibit A, p. 18. There is no evidence that at that time the Respondent and the father of Respondent's child was living in the home or that the Respondent was aware of the drug-related felony convictions of her father's child. Thus, based on the evidence presented, the Department did not establish by clear and convincing evidence that the Respondent knowingly misrepresented the felony status of the father of her child and a mandatory group member in order to obtain more FAP benefits or to keep the FAP benefits from being reduced or terminated. Based upon this evidence, no IPV is established.

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. 12. 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. 13. 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. 13.

In this case, because the Department failed to establish by clear and convincing evidence that the Respondent committed an IPV of her FAP benefits, the Department is **not** entitled to a finding of disqualification as regards the Respondent.

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 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 this case, even though the Respondent was not found to have committed an IPV of her FAP benefits, the Department did present sufficient evidence to demonstrate that she received an OI of FAP benefits as the mandatory group member and father of her child was not eligible to receive any FAP as he was convicted of two drug-related felonies and is permanently ineligible and was at all times pertinent to this matter. The Department presented OI budgets covering the period [REDACTED]

██████████ and ██████████, which were reviewed at the hearing. Exhibit A, pp. 84–95 and 100–119. The Department’s evidence established that it applied the appropriate OI begin date based on the application filed ██████████, as the mandatory group member was ineligible as of the application date due to his permanent disqualification based on two drug-related felony convictions. The budgets as presented, using a group size of two members, rather than three as presented, were reviewed and found to be correct. Thus, the Department is entitled to recoup \$ ██████████ for the period ██████████; and \$ ██████████ for the period ██████████; for a total OI of \$ ██████████ Exhibit A, p. 4.

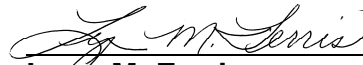
DECISION AND ORDER

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** receive an OI of FAP benefits in the amount of \$ ██████████

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ ██████████ in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

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]

Via email

[REDACTED]