



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: November 9, 2016
MAHS Docket No.: 16-012206
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 Food Assistance?

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 including starting employment.
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 [REDACTED], (fraud period).
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 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 December 2015, 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 (12/1/15), 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 (May 1, 2014), p. 7; BAM 720, (May 1. 2014), 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.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

All Programs

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change.

Income reporting requirements are limited to the following:

Earned income:

- Starting or stopping employment.
- Changing employers.
- Change in rate of pay.
- Change in work hours of more than five hours per week that is expected to continue for more than one month.

Unearned income:

- Starting or stopping a source of unearned income.
- Change in gross monthly income of more than \$50 since the last reported change. BAM 105 (April 1, 2014) pp. 8-9.

In this case, the Department seeks to establish an IPV based upon Respondent's alleged failure to report employment and income when she began her employment in [REDACTED]. The Department also alleges the Respondent received an OI of FAP benefits when her income from employment is included in the FAP group's income. The Department also seeks a 12-month disqualification of the Respondent from receiving FAP benefits.

In this case, the Respondent completed a Redetermination for FAP benefits on [REDACTED] [REDACTED] and was aware that she was required to report changes in household income and employment as part of the application process. Exhibit A, p. 17. At the time of a redetermination, the Respondent reported that she was divorced as of [REDACTED]. Exhibit A, p.17. At the time of the redetermination, the Respondent was not working.

The Respondent began employment as a caregiver in [REDACTED]. Exhibit A, p. 31. The Respondent did not report the income and her employment until her next redetermination, completed in [REDACTED] when she provided the Department a copy of her paystub from [REDACTED]. Exhibit A, p. 32.

Income and employment information was obtained by the Department, which demonstrated that Respondent began working in [REDACTED] and continued working through [REDACTED] Exhibit A, p. 30. Thus, at the time of the [REDACTED] redetermination, the Respondent correctly reported employment. Based upon the evidence presented, although the Respondent was required to report her income and employment timely and did not, she did not misrepresent facts to the Department at the time she completed the first redetermination and, thereafter, reported her employment on the next Redetermination, although she did so late. Even though the Respondent did not report her employment timely, she at no time misrepresented that she was not employed when she was. Under these circumstances, it is determined that no IPV has occurred.

Disqualification

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 1516 BEM 715 (July 1, 2013), 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. 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, because the Department has failed to establish that an IPV was committed by the Respondent, the Department is not entitled to a finding of disqualification of the Respondent from receiving FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. An **overissuance** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1.

As stated previously, the Department has not established that Respondent committed an IPV of her FAP. Moreover, it is found that the Department applied the appropriate OI begin date of [REDACTED] based upon Respondent's beginning work date in [REDACTED]. See BAM 720, p. 7, and Exhibit A, pp. 70-74.

In this case, the Department presented OI budgets for the months in question. Exhibit A, pp. 36-55. The OI budgets included the Respondent's income that was not previously budgeted because it was not reported by Respondent. A review of the OI

budgets at the hearing found them to be correct. However, the budget for [REDACTED], because it did not use actual income, did not calculate the OI correctly. BEM 720 requires if improper reporting or budgeting of income caused the OI, the Department must use actual income for the OI month for that income source. BEM 720, p. 10. In this case, the Department averaged income because no [REDACTED] paystubs were available. Exhibit A, pp. 31-32. Thus, the Department is entitled to recoup all months except [REDACTED]. When the OI of \$ [REDACTED] for [REDACTED] is deducted from the total OI amount of \$ [REDACTED] the balance of \$ [REDACTED] remains and is determined to be the OI for the benefits over issued for the period [REDACTED].

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 \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] 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]

[REDACTED]