



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: November 14, 2016
MAHS Docket No.: 16-013199
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 October 31, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED].

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 June 28, 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 income.
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 September 1, 2014 to May 31, 2015 (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 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 her benefits because she failed to notify the Department of her employment wages, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

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.

BAM 105, p. 9.

First, the Department presented Respondent's online application dated November 9, 2012, and her Notice of Case Action dated December 5, 2013, to show that the Respondent was aware of her responsibility to report changes as required. Exhibit A, pp. 11-33.

Second, the Department presented Respondent's Wage Match Client Notice dated April 17, 2015, to show that she received earned income. Exhibit A, pp. 40-41. Also, the Department presented Respondent's employment verification to show that she received wages during the alleged fraud period. Exhibit A, pp. 45-48. It should be noted that the employment verification showed her name to be [REDACTED], which she did not deny that her name was [REDACTED] previously, but changed due to identify theft.

Third, the Department presented Respondent's Redetermination dated November 10, 2014, which was submitted during the alleged fraud period. Exhibit A, pp. 34-39. In the Redetermination, Respondent reported income from [REDACTED], but the Department argued that she failed to report income from [REDACTED] [REDACTED] Exhibit A, pp. 37 and 45-48.

At the hearing, Respondent testified and/or made the following assertions: (i) she did not commit a violation of the FAP program; (ii) she acknowledged that she worked at [REDACTED], and she used to be a truck driver until October 2013;

(iii) she denies that she worked at "[REDACTED]" during the alleged fraud period and instead it was her friend that worked for this company and the company, in accordance with her friend, used her identify in order for him to legally drive (iv) her testimony appeared to indicate that this was done by the "[REDACTED]" in order for her friend to drive additional hours (doctoring the driving hours); (v) she claimed that it was "[REDACTED]," a trucking company, that used her name/driver's license/social security number (SSN)/log book (which documents the hours driven), in accordance with her friend, that allowed him to legally drive to/from [REDACTED]; (vi) she claimed that she did not know that [REDACTED] was going to use her SSN to issue payments under her name and instead, she thought that the company was just going to use her logbook and driver's license so her friend could have a valid trip; (vii) thus, she claimed that the employment verification that showed her name and paychecks being issued in her name were actually for her friend; and (viii) the actual payments were loaded onto a card.

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

First, Respondent claimed that she did not work for "[REDACTED]" and instead, it was her friend who worked for the company and used her name in lieu of his name. However, the undersigned does not find Respondent's argument credible. Respondent failed to provide any documented evidence (i.e., her log book) or her friend, who she claimed was the actual employee of "[REDACTED]," to corroborate her allegations. Instead, the undersigned finds that the Department presented sufficient evidence to establish that Respondent was the actual employee of "[REDACTED]." Both Respondent's name and the last four of her SSN on the employment verification matches her identify. See Exhibit A, pp. 45-48. As such, the undersigned finds that Respondent was an employee of "[REDACTED]," and that she received employment earnings from them during the fraud period.

Second, the undersigned finds that the evidence established that Respondent intentionally withheld or misrepresented her income information from [REDACTED] during the fraud period. The Department presented Respondent's Redetermination that was received on November 10, 2014, which was submitted during the fraud period. Exhibit A, pp. 34-39. In the Redetermination, Respondent did not report or provide proof of the last 30-days of her employment from [REDACTED] even though the evidence established that she received income from this company within 30-days from the time she signed the document on November 6, 2014 (pay check received on [REDACTED]). See Exhibit A, pp. 37, 39, and 47. This evidence is sufficient to establish that Respondent intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her benefits or eligibility. As such, the Department has established that Respondent committed an IPV of FAP benefits.

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 it is entitled to receive, MDHHS 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 her FAP benefits. Moreover, it is found that the Department applied the appropriate OI begin date of September 1, 2014. See BAM 720, p. 7 and Exhibit A, pp. 4 and 45-48.

In this case, the Department presented OI budgets from September 2014 to May 2015. Exhibit A, pp. 51-69. The budgets included Respondent's income that was not previously budgeted. Exhibit A, pp. 45-48. A review of the OI budgets found them to be fair and correct. As such, the Department is entitled to recoup [REDACTED] of FAP benefits it issued for September 1, 2014 to May 31, 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 FAP program 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, less any amount already recouped and/or collected.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period of **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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
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CC:

[REDACTED]
[REDACTED] [REDACTED]