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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

Date Mailed: December 6, 2016
MAHS Docket No.: 16-013273
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 November 21, 2016, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. 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 29, 2016.
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 June 1, 2011 to December 31, 2011 (fraud period).
7. This was Respondent's first alleged IPV.
8. A notice of hearing was mailed to Respondent at the last known address and was returned by the US Post Office as undeliverable.
9. On April 25, 2016, Administrative Law Judge (ALJ) [REDACTED] issued a hearing decision in which he ordered the Department to initiate collection procedures against Respondent for a [REDACTED] overissuance for the period of June 1, 2011 to December 31, 2011 (Reg. No. 15-010246).

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.

In this case, the Department alleged that Respondent committed an IPV of her FAP benefits. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing, it was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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 FAP benefits because she failed to timely report her self-employment income to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (June 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

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. 7.

First, the Department presented Respondent's online application dated January 19, 2011, to show that the Respondent was aware of her responsibility to report changes as required. Exhibit A, pp. 10-39.

Second, the Department presented verification of Respondent's self-employment that showed her services were contracted by [REDACTED], Inc. during the period of April 20, 2011 to November 29, 2014. Exhibit A, pp. 47-51. The verification further stated Respondent's contractual relationship was described as "Self-Employed Independent Contractor." Exhibit A, p. 48.

Third, the Department presented Respondent's Notice of Case Action dated January 31, 2011, to show how this document explains Respondent's benefits were approved and provides forms for reporting changes. Exhibit A, pp. 9 and 40-46.

Fourth, the Department presented Respondent's "Case Comments – Summary" (case comments) that showed she reported her self-employment income to the Department on or about December 12, 2011, during a redetermination interview. Exhibit A, p. 53.

Fifth, the OIG Investigation Report (OIG report) indicated that the agent spoke to Respondent via telephone on June 15, 2016, and the OIG report documented the following from the interview: (i) she was adamant that she had reported the income to the specialist timely; (ii) she further stated that the specialist provided a self-employment form to be completed, which was returned to the agency; (iii) she stated she was in a middle of a divorce during that time period, and her ex-husband refused to leave the home, stating that she moved multiple times, and is not able to locate any documents from that time period, but will continue to look; (iv) she reported that there was previous hearing on this matter, where she missed the appointment due to her employment schedule, and the decision was ruled in favor of the agency; and (v) the OIG agent explained the process for the hearing and the notification of the date. Exhibit A, p. 3.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The evidence presented that Respondent did not report her self-employment until her redetermination interview conducted on or about December 12, 2011. Exhibit A, p. 53 (Case Comments). This was approximately eight months after she began receiving her self-employment income (first check dated April 29, 2011). See Exhibit A, p. 49. The evidence is persuasive that Respondent did not report her self-employment income timely. Nevertheless, this evidence shows that Respondent did not intentionally withhold or misrepresent her self-employment income as she eventually reported it to the Department. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her self-employment income for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than they are 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 the present case, the Department testified that the OI was [REDACTED] the period of June 1, 2011 to December 31, 2011. See Exhibit A, pp. 1 and 3-4. However, the Department's OIG Investigation Report (OIG report) indicated that the Department system (Bridges) contained a hearing decision in which a hearing was already held to address Respondent's OI of FAP benefits. Exhibit A, p. 3. In fact, the undersigned ALJ did further research and discovered that on April 25, 2016, [REDACTED] issued a hearing decision in which he ordered the Department to initiate collection procedures against Respondent for a [REDACTED] overissuance for the period of June 1, 2011 to December 31, 2011 (Reg. No. 15-010246).

Based on the above information and evidence, the undersigned will not address the OI claim because the OI had already been established at a prior hearing held in front of [REDACTED] on April 14, 2016 (Reg. No. 15-010246). [REDACTED] ruled in the Department's favor for the same OI amount and time period sought in this hearing. The undersigned lacks the authority to readdress the OI sought in this case when it already has been established and addressed. Accordingly, the Department is only able to seek an IPV in this case, which the undersigned ALJ already concluded above that the Department failed to establish. There is nothing further for the undersigned ALJ to address in regards to the OI claim.

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 is **NOT** subject to a disqualification from the FAP program.

EF/



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]
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CC: [REDACTED]
[REDACTED]