



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: December 13, 2016
MAHS Docket No.: 16-015047

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 23, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Benefits (FAP) and Child Development and Care (CDC) 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 the FAP program for 1 year?

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 September 13, 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 FAP program benefits.
3. Respondent was a recipient of FAP and CDC benefits issued by the Department. Department Exhibit 1, pgs. 143-145 and 171-177.
4. On the Assistance Applications, DHS 1171, signed by Respondent on August 10, 2009, March 12, 2012, July 22, 2012, and online application submitted by the Recipient on January 13, 2013 April 30, 2013 July 8, 2013 and an Online Redetermination Application, DHS 1010 submitted by the Respondent on June 30, 2013, the Respondent reported that she understood the responsibility to report changes in household group composition to the Department within 10 days. Department Exhibit 1, pgs. 14-27, 43-93, 94-117, and 126-142. .
5. Respondent **was** aware of the responsibility to report changes in household group composition where the Department is alleging that she failed to report that her husband was still in the home and his earned employment income would have to be counted, which would have resulted in a decrease in FAP benefits and no requirement for CDC benefits. Department Exhibit 1, pgs. 178-214.
6. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period FAP was September 1, 2012 through August 31, 2013 and for CDC was November 18, 2012 through January 26, 2013 and June 2, 2013 through June 27, 2013 (fraud period).
8. During the fraud period, Respondent was issued [REDACTED] in FAP and [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in FAP and [REDACTED] in CDC benefits during this time period. Department Exhibit 1, pgs. 146-170.
9. The Department alleges that Respondent received an OI in FAP and CDC benefits in the amount of [REDACTED]
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 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 October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking over issuances 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, ASM 165.

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; BAM 720.

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

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 (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.

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; BEM 708. 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. 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. 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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

In this case, the Respondent was a recipient of FAP and CDC benefits issued by the Department. Department Exhibit 1, pgs. 143-145 and 171-177. On the Assistance Applications, DHS 1171, signed by Respondent on August 10, 2009, March 12, 2012, July 22, 2012, and online application submitted by the Recipient on January 13, 2013 April 30, 2013 July 8, 2013 and an Online Redetermination Application, DHS 1010 submitted by the Respondent on June 30, 2013, the Respondent reported that she understood the responsibility to report changes in household group composition to the Department within 10 days. Department Exhibit 1, pgs. 14-27, 43-93, 94-117, and 126-142. Respondent **was** aware of the responsibility to report changes in household group composition where the Department is alleging that she failed to report that her husband was still in the home and his earned employment income would have to be counted, which would have resulted in a decrease in FAP benefits and no requirement for CDC benefits. Department Exhibit 1, pgs. 178-214. Respondent **did not have** an

apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The Department's OIG indicates that the time period it is considering the fraud period FAP was September 1, 2012 through August 31, 2013 and for CDC was November 18, 2012 through January 26, 2013 and June 2, 2013 through June 27, 2013 (fraud period). During the fraud period, Respondent was issued [REDACTED] in FAP and [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in FAP and \$0 in CDC benefits during this time period. Department Exhibit 1, pgs. 146-170. The Department alleges that Respondent received an OI in FAP and CDC benefits in the amount of [REDACTED]. This was Respondent's **first** alleged IPV. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the US Post Office as undeliverable.

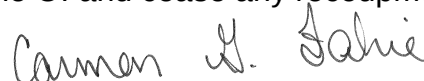
During the hearing, the Respondent stated that her husband was not in the home and was required by the court to pay child support. She submitted 2 support orders for her husband from [REDACTED] dated, January 12, 2011 and June 28, 2011, but she testified that he has been ordered by the court to pay child support. Respondent Exhibit 1, pgs. a, 5-10. This Administrative Law Judge notes that the contested time period is from 2012 through 2013 and is not covered by the Respondents evidence. The original OIG agent, [REDACTED], was not available to present his case so another agent presented it for him. [REDACTED] did submit child support payments, but he only requested from June 2015 through December 2016, which is also not the contested time period. Respondent Exhibit 1, pgs. 1-4. However, the burden is on the Department to prove they met the standard of clear and convincing evidence of which that burden has not been met today.

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, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. Respondent **did/not** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) of FAP and CDC.

The Department is ORDERED to delete the OI and cease any recoupment action.



Carmen G. Fahie

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

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]