



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: June 29, 2017
MAHS Docket No.: 16-015780
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 April 10, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared for the hearing with her husband, Justin Counts and represented herself.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 or around September 19, 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 benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in her circumstances to the Department, such as changes in employment and 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 February 1, 2015, to July 31, 2015 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$3894 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$291 such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3603.
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. 5,12-13.

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 (January 2016), pp.7-8; 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 the FAP because she failed to report to the Department that she had returned to her employment with [REDACTED] after being off work due to an injury and was earning income, causing an overissuance. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (January 2015), pp.10-12.

The Department contended that Respondent's failure to timely report the employment and earned income caused an OI of FAP benefits in the amount of \$3603 from February 2015 to July 2015. The Department provided verification of employment from the Work Number detailing Respondent's employment with [REDACTED], which showed that Respondent had earnings through December 17, 2014, with a lapse in pay until January 28, 2015, at which time Respondent had earnings through the remainder of the fraud period. (Exhibit A, pp. 13-18).

In support of its contention that Respondent committed an IPV, the Department presented an application completed by Respondent and received by the Department on [REDACTED], 2015, prior to the alleged fraud period and during the period in which Respondent was not working due to an injury. A review of the application shows that Respondent reported that she was employed and that her employment was expected to continue. Respondent further reported that she was injured on December 10, 2014, and had been unable to work so she currently has no income. (Exhibit A, pp.34-75). While this was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, it does not establish by clear and convincing evidence that Respondent committed an IPV. The Department also presented an assistance application completed by Respondent and received by the Department on July 12, 2015, on which Respondent disclosed her employment and earnings for the six months prior to her application date. (Exhibit A, pp. 76-114).

At the hearing, Respondent testified that she was injured and unable to work from December 10, 2014, through the end of January 28, 2015, consistent with the Work Number. Respondent asserted that the paycheck she received on December 17, 2014, was a partial check for the pay period before she was injured. Respondent testified that she reported her return to work in January 2015 at the time of her three month review and provided her case worker with paystubs.

After a thorough review of the evidence presented, the Department has failed to establish that Respondent intentionally withheld information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit an IPV.

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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP.

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 a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

At the hearing, the Department alleged that the State of Michigan issued \$3894 in FAP benefits to Respondent from February 2015 to July 2015. (Exhibit A, p.45). The Department contended that Respondent's failure to timely report her return to her employment and income caused an OI of FAP benefits in the amount of \$3603, as the Department alleged that Respondent was eligible for \$291 in FAP benefits during this period. (Exhibit A, p. 33).

In support of its OI case, the Department presented verification of Respondent's employment from the Work Number which detailed the amounts earned and pay dates. The Department testified that based on Respondent's return to work date of December 3, 2014, it determined that the first month of the OI period would be February 2015, as clients have 10 days to report changes, the Department has 10 days to process the reported changes, and Department policy provides for a 12 day negative action period. However, the evidence established that Respondent had a gap in her employment due to an injury that occurred on December 10, 2014. Thus, based on the evidence as presented, the first paycheck received by Respondent after her return to work was January 28, 2015. Given a first pay date of January 28, 2015, the Department should have started the OI period in March 2015.

The Department also presented FAP OI Budgets to show how the OI was calculated. Although the Department alleged an OI of \$649 for the month of July 2015, the Department failed to include a FAP OI budget for the month of July 2015. Thus, the Department did not establish that an OI occurred for that month and is not entitled to recoupment.

A review of the budgets for each of the remaining months shows that when Respondent's unreported earnings are included in the calculation of the group's FAP eligibility, Respondent's group was eligible to receive \$182 in FAP benefits for the period between March 2015 and June 2015. (Exhibit A, pp. 23-33). Thus, the Department is entitled to recoup or collect from Respondent \$2414 in FAP benefits which is the difference between the \$2596 in FAP benefits actually issued to her and the \$182 in FAP benefits she was eligible to receive from March 2015 to June 2015.

Additionally, Respondent and her husband testified that they currently have an active FAP case and that Department had already begun recoupment of \$77 from their monthly FAP allotment. Respondent further testified that the Department had withheld \$970 from her 2016 tax return. It was unclear if the recoupment/collection identified by Respondent was in connection with the same OI at issue in this case. While the Department testified that a client error OI had possibly been established in this case, the Department did not present any evidence in support of its testimony and could not otherwise identify the amount already recouped as it related to this OI.

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 of the FAP.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$2414 for the period of March 2015 to June 2015.

The Department is ORDERED to reduce the OI to \$2414 for the period March 2015 to June 2015, and initiate recoupment/collection procedures in accordance with Department policy, less any amount that has already been recouped/collected.

ZB/tlf



Zainab A. Baydoun
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

Via Email:

MDHHS-Jackson-
Hearings@michigan.gov
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]