



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.: 16-019346
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 May 1, 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 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 December 29, 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 her circumstances to the Department, such as changes in group composition, household size and employment/income of household members.
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 November 1, 2012, to October 31, 2014 (fraud period).
7. The Department alleges that, during the fraud period, Respondent was issued \$16,245 in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$4,254 in such benefits during this time period. (Exhibit A, p. 4)
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$11,991.
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 January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500 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 alleged that Respondent committed an IPV of the FAP because she failed to report that the father of her children, [REDACTED], a mandatory

group member, was living in her home and that he was earning income. 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 10 days of receiving the first payment reflecting the change. Changes such as persons living in the home must be reported to the Department within 10 days after the client is aware of them. BAM 105 (November 2012), pp.7-11.

The Department contended that Respondent's failure to accurately report her group composition and the failure to report [REDACTED]' income caused an OI in FAP benefits in the amount of \$11,991 from November 2012 to October 2014. The Department asserted that after including [REDACTED] as a member of Respondent's FAP group and including his unreported earned income in the calculation of the group's FAP eligibility, the group was eligible for \$4,254 in FAP benefits during the alleged fraud period.

In support of its contention that Respondent committed an IPV, the Department presented a redetermination signed by Respondent on [REDACTED] 2012, prior to the fraud period, and assistance applications dated [REDACTED], 2013, and [REDACTED], 2013, on which Respondent does not list the father of her children [REDACTED] as a household member. (Exhibit A, pp. 12-49, 60-80). This is sufficient to establish that Respondent was advised of her responsibility to accurately report her circumstances and to report changes in her circumstances, as well as the penalties for failing to do so.

Although Department policy provides that parents and their children who live together are mandatory group members and must be included as household members, the Department must establish that [REDACTED] lived in the home with Respondent for the entire fraud period as alleged and as required by FAP group composition policy. See BEM 212 (November 2012/July 2014), pp. 1-3.

For FAP group composition purposes, living with, means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Additionally, the person cannot be temporarily absent from the home. A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true: the person's location is known; the person lived with the group before an absence; there is a definite plan for return; and the absence has lasted or is expected to last 30 days or less. BEM 212, pp. 1-3.

The Department maintained that [REDACTED] was living with Respondent during the fraud period. The Department presented lease agreement documentation showing that during the fraud period, Respondent and [REDACTED] were occupants of a residence and that both their names were on the lease. (Exhibit A, pp. 50-59). The Department also presented verification of employment for [REDACTED]' employment with [REDACTED] which shows that he reported Respondent's address as his address for employment purposes. (Exhibit A, pp. 84-87). Additionally, the Department provided

school information records for Respondent's children which indicate that both parents are reported to be in the home (Respondent and [REDACTED] and that the children live with both of their parents at Respondent's address. (Exhibit A, pp. 81-82). The Department also recalled the interviews conducted with [REDACTED], the landlord, and employer during the course of its investigation, in support of its assertion that [REDACTED] was living with Respondent during the fraud period. (Exhibit A, pp. 1-4)

At the hearing, Respondent confirmed that [REDACTED] is the father of her children and testified that he did not live with her during the period at issue. Respondent stated that she does not know where [REDACTED] lived during the time period.

After thorough review of the evidence presented, the Department has presented sufficient evidence to establish that [REDACTED] and Respondent lived together for FAP group composition purposes. Because Respondent failed to identify [REDACTED] as a household member and his income on the redetermination and assistance applications completed, the Department's evidence establishes that Respondent committed an IPV of the FAP.

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 an 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 has satisfied its burden of showing that Respondent committed an FAP IPV. Because this was Respondent's first IPV, she is subject to a one-year 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 an 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 presented a FAP Eligibility Summary to establish that for the months included in the OI period, the State of Michigan issued \$16,245. (Exhibit A, pp. 88-96). The Department contended that Respondent's failure to report [REDACTED] in the home and his income caused an OI of FAP benefits in the amount of \$11,991, as the Department alleged that Respondent's group was eligible for \$4,254 in FAP benefits during this period. (Exhibit A, p. 95-96).

In support of its OI case, the Department presented [REDACTED] verification of employment which detail the amounts earned and pay dates during the fraud period.

(Exhibit A, pp. 83-87). Although the Department did not present OI budgets for the months of February 2013, November 2013, and December 2013, a review of the OI summary indicates that the Department did not allege an OI for those months. (Exhibit A, pp. 95-140).

The Department presented FAP OI Budgets for each of the remaining months in the fraud period to show how the OI was calculated. A review of the budgets for each month shows that when the group size is increased to include [REDACTED] as a FAP household member, and when his unreported earnings are included in the calculation of the group's FAP eligibility, Respondent's group was eligible to receive \$4,254 in FAP benefits during the fraud period.

Thus, the Department is entitled to recoup or collect from Respondent \$11,991 in FAP benefits which is the difference between the \$16,245 in FAP benefits actually issued to her and the \$4,254 in FAP benefits she was eligible to receive.

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 of the FAP.
2. Respondent **did** receive an OI of program benefits in the amount of \$11,991 from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$11,991 in accordance with Department policy, less any amount already recouped/collected.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of 12 months.



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:

DHS-Kent-Hearings@michigan.gov
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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