



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: January 20, 2017
MAHS Docket No.: 16-012681
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 January 19, 2017, 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 Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) 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 and FIP?

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 August 16, 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 and FIP 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 FAP fraud period is April 1, 2013 to November 30, 2013 (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the FIP fraud period is April 1, 2013 to April 30, 2013 (FIP fraud period).
8. During the fraud period, Respondent was issued [REDACTED] in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and FIP benefits in the amount of [REDACTED]
10. This was Respondent's first alleged IPV.
11. On September 20, 2016, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Disqualification Hearing notifying them of a hearing scheduled for October 20, 2016.
12. On October 20, 2016, Administrative Law Judge (ALJ) Carmen G. Fahie issued an Adjournment Order.
13. On December 16, 2016, MAHS sent both parties a Notice of Disqualification Hearing notifying them of a hearing scheduled for January 19, 2017.
14. The 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 (August 2016), pp. 1-2.

As a preliminary matter, on January 19, 2017, MAHS was contacted by Respondent just prior to the commencement of the hearing in which she indicated that she would be submitting a request for adjournment due to recent medical complications and inability to attend the hearing. However, the undersigned ALJ never received any adjournment request. Moreover, Respondent was aware of the hearing scheduled 30-days in the advance and failed to notify the undersigned ALJ in writing ahead of time of the adjournment request. Because Respondent failed to provide a written request of an adjournment before the scheduled hearing and she failed to attend the scheduled hearing at the Macomb DHHS office, the hearing proceeded in Respondent's absence. See BAM 600 (October 2016), pp. 11-12 (Requests for Adjournment).

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 and FIP benefits because she failed to notify the Department of her employment earnings, which caused an overissuance of FAP and FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (March 2013), 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 23, 2013, to show that the Respondent was aware of her responsibility to report changes as required. Exhibit A, pp. 10-25.

Second, the Department presented verification of Respondent's income that showed she received wages from February 15, 2013 to November 29, 2013. Exhibit A, pp. 26-28.

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 and FIP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld her employment earnings from the Department. The Department presented Respondent's application and employment verification. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld her employment income during the alleged fraud period for the purpose of maintaining Michigan FAP and FIP eligibility. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the earned income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP and FIP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP and FIP 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 2016), 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 and FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP and FIP program. BAM 720, p. 16.

FAP and FIP Overissuance

As stated above, there was no IPV committed in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

However, there is no client error present in this case because the Department failed to satisfy its burden of showing that Respondent received an OI of FAP and FIP benefits.

In establishing the OI amount, the Department presented OI budgets for the benefit periods of April 2013 to November 2013. Exhibit A, pp. 32-41. The purpose of the OI budgets is it to show how the Department calculated the overpayment amount. See BAM 715, p. 8. However, after a thorough review of the budgets presented, the Department miscalculated the OI amount.

Policy states that if improper reporting or budgeting of income caused the overissuance, the Department use actual income for that income source. BAM 715, p. 8. The Department converts all income to a monthly amount. BAM 715, p. 8. Except, for FAP only, the Department does not convert the averaged monthly income reported on a wage match. BAM 715, p. 8.

In the present case, the Department did not use Respondent's actual income received to calculate the OI amount as required per policy. See BAM 715, p. 8. Instead, the Department converted Respondent's earnings to a standard monthly amount by multiplying the amounts she received weekly by 4.3. See BEM 505 (October 2010), p. 6 and Exhibit A, pp. 28 and 32-39. For example, Respondent received [REDACTED] in actual earnings for April 2013. Exhibit A, p. 28. However, the Department converted Respondent's earnings to a standard monthly amount and indicated her income for April 2013 was [REDACTED]. See Exhibit A, pp. 28, 32, and 40. This is an improper calculation. Instead, the Department should have used the actual income Respondent received, which was [REDACTED], in determining the OI amount. See Exhibit A, pp. 28,

32, and 40 and BAM 715, p. 8. The Department repeated this miscalculation throughout the FAP and FIP budgets. Exhibit A, pp. 28 and 32-39. Because the Department failed to establish that it properly calculated the OI budgets, the Department did not satisfy its burden of showing that Respondent received an OI for FAP and FIP benefits. BAM 700, p. 1 and BAM 715, p. 8.

It should be noted that the FIP budget also appeared to be improper because policy states that the Department deducts [REDACTED] from each person's countable earnings, and then an additional 50 percent of each person's remaining earnings. See BEM 518 (November 2012), p. 4. A review of the FIP budget showed that the Department only provided Respondent with an additional 20 percent disregard, which is only applicable at application. See BEM 518, p. 4 and Exhibit A, p. 40. Instead, Respondent appeared to be eligible for the 50 percent additional deduction for the benefit month of April 2013 because this month was not at the time of application, Respondent was receiving ongoing benefits at this point. See BEM 518, p. 4 and Exhibit A, pp. 29 and 40.

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 FAP and FIP benefits.
2. Respondent **did not** receive an OI of FAP and FIP program benefits in the amount of [REDACTED].

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

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]
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