



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 7, 2017
MAHS Docket No.: 16-009434
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED], 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) 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?

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 [REDACTED], 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 all 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 [REDACTED], (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
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 \$500.00 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (1/1/16), pp. 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 (December 2011), p. 6; (May 1, 2014), p. 7

BAM 720 (December 2011), p. 1; (October 1, 2014), p. 1

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, (December 2011), p. 1; (October 1, 2014), p. 1; BAM 700, (December 2011) p. 7; (May 1, 2014), p. 2.

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 seeks to establish an IPV of Respondent's FAP benefits due to Respondent's alleged failure to report the full amount of her pension benefits when applying for FAP, Medical Assistance (MA) and when completing a Redetermination. Exhibit A, p. 11. The Department has alleged that the failure to report the full amount of the pension income caused the Respondent to receive FAP benefits which she was not entitled to receive because her total unearned income from Retirement, Survivors and Disability Insurance (RSDI) and pension exceeded the gross income limit.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (December 1, 2011) p. 5; (October 1, 2014), p. 7.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BEM 105 (December 1, 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11

Income reporting requirements are limited to the following;

Unearned income:

- Starting or stopping a source of unearned income.
- Change in gross monthly income of more than \$50.00 since the last reported change.

In this case, the Respondent reported the income, however, grossly underreported the income and thus, did not completely and truthfully answer with the correct and full amount of pension income received.

The Department presented the following evidence in support of their burden to establish an IPV. From the first application presented the Respondent underreported her pension benefits. The Respondent applied for FAP benefits in an application dated [REDACTED] and reported receiving pension income of \$ [REDACTED]. At the time of the application, based upon the pension provider response to subpoena issued by the Department, the pension benefits received by Respondent for the year [REDACTED] were \$ [REDACTED] monthly. It is clear that the Respondent failed to report the gross income amount of the pension when applying for FAP benefits in [REDACTED]. Exhibit A, p. 20.

In [REDACTED] the Respondent applied for MA and did not complete any income for the application even though there were boxes to check for RSDI and Pension/retirement benefits. Exhibit A, p. 43. In [REDACTED] the pension benefits in the year [REDACTED] were \$ [REDACTED] monthly.

The Respondent completed a Redetermination for [REDACTED] and reported her gross amount before deductions for pension income as \$ [REDACTED]; and again the monthly income for [REDACTED] from the pension was \$ [REDACTED] Exhibit A.

The Respondent applied for Health Care Benefits on [REDACTED], and reported \$ [REDACTED] for RSDI and \$ [REDACTED] for Pension. The answer had the decimals in the wrong place. The Respondent's pension benefits for [REDACTED] were \$ [REDACTED] monthly.

During the fraud period, [REDACTED], the Department presented a Benefit Issuance Summary which confirmed the Respondent received FAP benefits during the entire alleged fraud period. Exhibit A, pp. 62-67. Based upon the evidence presented, although the Respondent was required to report her pension income fully, reporting the gross income, she consistently failed to do so; and no valid reason for this consistent underreporting of the pension amount can be substantiated. The Respondent consistently misrepresented facts to the Department underreporting every year the gross pension amount. Thus, it is determined that an IPV has occurred.

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. 2; 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. 13; (October 1, 2014), 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. 1-2. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13; (October 1, 2014), p. 17.

In this case, because the Department has established that an IPV was committed by the Respondent, the Department therefore is entitled to a finding of disqualification of the Respondent from receiving FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; (May 1, 2014), p. 1. An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, p. 7; (May 1, 2014), p. 1.

In this case, the Department presented OI budgets for each month for the years in question, [REDACTED]. Exhibit A, pp. 68-139. The OI budgets included the Respondent's unearned income from RSDI and the full amount of the Respondent's pension income. When both incomes are added together, the totals for each of the months reviewed exceeded the gross income limit for FAP eligibility for

the year in question. A review of the OI budgets at the hearing and further review by the undersigned found them to be correct. Thus, the Department is entitled to recoup \$ [REDACTED] for the benefit OI of [REDACTED].

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.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED].

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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

LMF/jaf



Lynn M. Ferris

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]

Petitioner

[REDACTED]

Respondent

[REDACTED]

[REDACTED]