



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 15, 2017
MAHS Docket No.: 16-013795
Agency No.: [REDACTED]
Petitioner: OIG
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 three-way telephone hearing was held on [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent was present for the hearing and participated by telephone. Respondent's husband, [REDACTED] was also present for the hearing and provided testimony.

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 changes in group composition.
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 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 (May 2013), pp. 1-2.

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 is requesting a program disqualification and recoupment of benefits due to Respondent's failure to report that she resided with her mother as a group member. The OIG agent argued that Respondent misrepresented eligibility when she initiated her own case claiming she no longer resided with her mother, when in fact, she did reside with her mother.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2015), p. 11. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 11. These include, but are not limited to, changes in persons in the home. BAM 105, p. 11.

Additionally, parents and their children under [REDACTED] years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (July 2014), p. 1.

First, the Department presented Respondent's online application dated [REDACTED], in which she applied for benefits as a minor. Exhibit A, pp. 11-44. In the application, Respondent reported her group size was two (Respondent and her son). Exhibit A, pp. 15-16. Further, in the "Additional Information" section of the application, Respondent stated a friend is allowing her to stay with them; and when she will begin working, she will be responsible for rent. Exhibit A, p. 25. At the time of this application, the Department argued that Respondent actually resided with her mother and misrepresented her eligibility when she claimed she only resided with her son.

Second, the Department presented a Front-End Eligibility (FEE) Investigation Report. Exhibit A, pp. 45-47.

Third, the Department presented a signed affidavit from Respondent dated [REDACTED] in which she wrote the following: (i) she wanted her state assistance closed; (ii) she is aware that she would have to pay her state benefits she received back to the state; and (iii) to close her case as of [REDACTED]. Exhibit A, p. 48. It should be noted that Respondent's mother also signed the affidavit as Respondent was a minor at the time. Exhibit A, p. 48.

Fourth, the Department presented Respondent's "Case Comments – Summary" (case comments), in which she denied living with her mother and that she lives with her aunt. Exhibit A, p. 49.

Fifth, the Department presented a signed affidavit the mother dated [REDACTED], in which she wrote the following: (i) her daughter (Respondent) lived with her during [REDACTED] and the period in which she applied for benefits in [REDACTED]; and (ii) her daughter is currently married and living in [REDACTED]. Exhibit A, p. 52.

At the hearing, Respondent testified that she was not living with her mother during the alleged fraud period, but with her aunt. She testified that there was not enough room in her mother's house, so she lived with her aunt. She testified she signed the affidavit because the agent said if she continued to say she does not live with her mother, when

her mother said she does live with her, she could go to jail for felony fraud. Respondent testified that her mother signed the affidavit claiming that she resided with her because she believed her mother wanted to claim her on her taxes. She testified her mother was not responsible for feeding her or paying any of her bills. Respondent testified that she stayed at her aunt's house and then at a friend's house and allowed her to be at her friend's house until she received a job to pay rent.

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 benefits. The Department's position is that Respondent misrepresented her eligibility when she initiated her own case claiming she no longer resided with her mother. In response, Respondent claimed that she did not reside with her mother. In order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that she did not commit a violation of the FAP program. Further, Respondent's testimony credibly established that she did not reside with her mother during the alleged fraud period, but instead, she resided at her aunt's and friend's home. Respondent's credibility is supported by her application and case-comments, which corroborated her testimony that she did not live with her mother. For example, in the "Additional Information" section of her application, she reported that a friend allowed her to stay with them and to pay rent when she began working. Exhibit A, p. 25. The undersigned Administrative Law Judge (ALJ) highlights this portion of the application because it is the same testimony that she provided during the hearing in which she claimed to not have lived with her mother, but instead, with her aunt and friend. This evidence bolsters Respondent's credibility that she did not reside with her mother during the alleged fraud period. As such, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her group composition information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP 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 an 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 benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In the present case, the Department alleged that Respondent misrepresented eligibility when she applied for benefits indicating she no longer resided with her mother, when in fact, the Department argued that she did reside with her mother. As such, the Department argued that Respondent received an OI of FAP benefits. However, as stated in the previous analysis, the Department failed to establish its burden of showing Respondent resided with her mother during the alleged OI period. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of FAP program benefits in the amount of \$ [REDACTED] for the period of [REDACTED]. Accordingly, the Department is ordered to delete the OI and cease any recoupment action.

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

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

EJF/jaf



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]

Petitioner

[REDACTED]

Respondent

[REDACTED]

[REDACTED]