



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 14, 2017
MAHS Docket No.: 16-014760
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). The Respondent was represented by herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits **and** Family Independence Program (FIP) cash assistance 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 Cash Assistance?

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 FAP and FIP program benefits.
3. Respondent was a recipient of FAP and FIP cash assistance benefits issued by the Department.
4. Respondent **was** aware of the responsibility to answer questions and applications fully and honestly and correctly.
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], (FAP) and [REDACTED], (FIP) (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. The Department's OIG indicates that the time period it is considering the fraud period for FIP is [REDACTED], (FIP) (fraud period).
10. 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.
11. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$ [REDACTED]
12. This was Respondent's **first** alleged IPV for FIP and FAP.
13. 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 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.

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 (July 1, 2013), p. 7, (January 1, 2016), p. 7; BAM 720, (July 1, 2013), p. 1, (January 1, 2016), 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 disclose she had been convicted of two drug-related felonies and was thus not eligible to receive food assistance.

For the Food Assistance Program and the FIP cash assistance Program the following disqualification from receipt of benefits results regarding convictions for drug related felonies. Policy found in BEM 203 provides:

People convicted of certain crimes and probation or parole violators are not eligible for assistance.

1st Offense A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole, FIP benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative.

2nd Offense An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods **will be permanently disqualified if both offenses occurred after August 22, 1996**. BEM 203 (July 1, 2013), pp. 1 and 2. (Emphasis supplied).

In this case, the Department seeks an Intentional Program Violation (IPV) involving both FAP and FIP cash assistance benefits due to the Respondent failing to report on several applications for FAP beginning on [REDACTED], that she had not been convicted of a drug-related felony. Exhibit A, pp. 17-18. The Department also found the Respondent failed to report any felony conviction when completing a redetermination for FAP and MA filed on [REDACTED]. Exhibit A, p. 31. The Respondent also completed an FAP application for [REDACTED], wherein she reported she had not been convicted of a drug-related felony and that she had not been convicted more than once, answering "NO" to both questions. Exhibit A, p. 50. Finally, the Petitioner completed an application on [REDACTED], for FAP and FIP cash assistance benefits. Exhibit A, p. 55. The Petitioner answered "NO" to the questions if she had ever been convicted of a drug-related felony after [REDACTED], and if she had been convicted more than once.

The Department presented verification of drug-related felony convictions based upon criminal reporting records presented as evidence at the hearing. Exhibit A, pp. 83-80. A review of the criminal reporting records indicate convictions involving drug-related felonies occurred on [REDACTED] and on [REDACTED]. Exhibit A, pp. 84-87. Based upon this evidence and the failure to report the drug-related felony convictions on the application(s) and Redetermination, the Department has established that the Respondent committed an IPV of her FAP benefits and FIP benefits. The Respondent testified that she told her caseworker(s) that she had been convicted; however, this testimony was overwhelmingly outweighed by repeated denials that she had ever been convicted, even in the [REDACTED] application year where she had been convicted in that year and filed an application after the drug-related felony conviction and continued to answer "NO" to the conviction questions.

Based upon the evidence presented, the Department has demonstrated by clear and convincing evidence that the Respondent committed an IPV of her FIP and FAP benefits as the Department clearly established two drug-related felony convictions.

Disqualification

A client who is found to have committed a FAP and FIP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; pp. 15-16. 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; 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, pp. 15, 16.

In this case, the Department presented clear and convincing evidence of two prior drug-related felony convictions by the Respondent that the Respondent never reported, and thus, established an IPV was committed by Respondent. This was Respondent's first alleged IPV; and thus, the Department is entitled to a finding of disqualification of the Respondent for 12 months from both the FIP and FAP benefit programs.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, (July 1, 2013), p. 1; (January 1, 2016), p. 1.

In this case, the Respondent received benefits for FAP commencing [REDACTED]. The Department presented an FAP Issuance Summary beginning [REDACTED], ongoing through [REDACTED]. During the entire period, the Respondent was ineligible; because from the start, she failed to report her felony convictions; and if she had, she would also have been ineligible to receive FAP benefits from the beginning starting with the period of her second drug-related felony conviction in [REDACTED]. Thus, she was ineligible from her first FAP application dated [REDACTED]. The Department presented FAP Benefit Issuance Summaries that demonstrated that throughout the period in question, [REDACTED], the Respondent received FAP benefits that she was not entitled to receive. Exhibit A, pp. 54-56. The FAP OI budgets were reviewed, and the budgets appear correct for each of the months in question and are determined to be correct. Based upon the evidence presented, the Department did establish that it is entitled to an OI of FAP benefits in the amount of \$ [REDACTED] Exhibit A, pp. 103-146.

As regards the FIP benefits, the Respondent first applied for FIP in [REDACTED], at which time commencing with the FIP application, the Petitioner was ineligible because she had two drug-related felonies at the time of the application. The Department presented an FIP Benefit Issuance Summary that demonstrated that throughout the period in question for FIP, [REDACTED], the Petitioner received FIP benefits she was not entitled to receive. Exhibit A, p. 102. The FIP OI budgets were reviewed, and the budgets appear correct for each of the months in question and are determined to be correct. Based upon the evidence presented, the Department did establish that it is entitled to recoup an OI of FIP benefits in the amount of \$ [REDACTED] Exhibit pp. 88-101.

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 involving both FAP and FIP benefits.
2. Respondent **did** receive an OI of **FAP** benefits in the amount of \$ [REDACTED]
3. Respondent **did** receive an OI of **FIP** benefits in the amount of \$ [REDACTED]

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

It is FURTHER ORDERED that Respondent be disqualified from both the FIP and FAP benefit programs 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]