



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

████████████████████
████████████████████
████████████████████

Date Mailed: February 14, 2017
MAHS Docket No.: 16-017711
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 January 19, 2017, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). The Respondent represented herself for the hearing and participated by telephone.

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 November 30, 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 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 March 1, 2016 to June 30, 2016 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████
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 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 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.

On January 19, 2017, Respondent attempted to submit post hearing correspondence, apparently pertaining to issues related to the IPV hearing, however the hearing record had closed and this additional correspondence cannot be reviewed or considered.

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 (October 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 benefits because she failed to timely report her son's, [REDACTED], employment income to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (July 2015), p. 10. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10.

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. 11.

First, the Department presented Respondent's online application dated June 17, 2015, to show that the Respondent was aware of her responsibility to report changes as required. Exhibit A, pp. 10-17.

Second, the Department presented Respondent's redetermination dated June 13, 2016, in which she first reported to the Department her son's employment income. Exhibit A, p. 21.

Third, the Department presented verification of the son's employment earnings dated May 26, 2016, which showed that he received income from on or about January 11, 2016 to May 15, 2016. Exhibit A, pp. 24-25. It should be noted that the verification shows that the son was at [REDACTED], " which appeared to be a temp agency and the son was then placed with [REDACTED], " which is the employment income at issue. Exhibit A, pp. 24-25.

At the hearing, Respondent argued and/or asserted the following: (i) she did not intend to commit an IPV of her FAP benefits; (ii) she spoke to her caseworker early on about

how to fill out an application and informed her caseworker that her son started a job with a temp service, but told her she was not sure when he would become permanent; (iii) she called multiple times her caseworker with no response and finally spoke to a supervisor who was able to have the caseworker call back on how to fill out an application; (iv) she asked the caseworker what she needed for her son's employment verification and the caseworker informed her to send all of her son's check stubs; (v) her argument appeared to indicate that she timely reported to the Department her son's employment; (vi) she stated her son started with the company around February 28, 2016; (vii) at first, she stated she did not know when her son was being paid, but she was then informed by her son he was getting paid; (viii) she did not know anything about her son's employment at [REDACTED]" until February 2016 when her son notified her; (ix) she knew her son was at [REDACTED]," in January 2016, but did not know that he was getting paid at that point by "[REDACTED]" and/or [REDACTED]"; (x) she left her caseworker a voicemail right after being informed by her son that he got a job with [REDACTED]" and thereafter, there were conversations between her and her caseworker about obtaining the son's employment verification; and (xi) in summary, she argued that she did not intend to commit an IPV of her FAP benefits and that she timely reported to the Department her son's employment.

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 evidence presented that Respondent did not report her son's employment earnings until she submitted the redetermination on June 13, 2016. Exhibit A, p. 21. Moreover, the evidence appeared to show that the Department received verification of the employment income before the redetermination on May 26, 2016. See Exhibit A, p. 24 (scan date on left hand side of the wage verification shows received date of May 26, 2016). This evidence is persuasive to conclude that Respondent did not report her son's employment income timely. Nevertheless, this evidence shows that Respondent did not intentionally withhold or misrepresent her son's employment income as the income was eventually reported to the Department. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the employment income 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 (October 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 benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

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.

In the present case, the evidence established that the son began receiving employment income on or about January 11, 2016 from "██████████" and/or ██████████. See Exhibit A, p. 25. Policy states that Respondent had to notify the Department of her son's employment income within 10 days of receiving the first payment, which would have been January 21, 2016 (ten-days after the first payment). BAM 105, pp. 10-11. However, the Department presented credible evidence showing that it did not receive notification of the son's income until at least May 26, 2016, when the employment verification was received. Exhibit A, pp. 21 and 24. Respondent failed to present any documentation showing that she timely reported her son's employment earnings. Thus, the undersigned Administrative Law Judge (ALJ) finds that the Department presented credible evidence showing that Respondent failed to timely notify the Department of her son's employment income. BAM 105, pp. 10-11. Accordingly, the undersigned ALJ finds that a client error overissuance is present in this case due to Respondent's failure to timely report her son's income. See BAM 715, p. 1.

Applying the overissuance period standard, it is found that the Department applied the appropriate OI begin date of March 1, 2016. See BAM 715, pp. 4-5 and Exhibit A, pp. 3 and 25.

Additionally, 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 715, p. 6.

In this case, the Department presented OI budgets for March 2016 to June 2016. Exhibit A, pp. 27-35. The budgets included the son's income that was not previously budgeted. Exhibit A, p. 25. A review of the OI budgets found them to be fair and correct, except for May and June of 2016. See BAM 715, p. 8. For a portion of May

2016 and all of June 2016, the Department did not use the son's actual income received when calculating the OI. For example, in June 2016, the budget indicated that the son's gross income was [REDACTED] Exhibit A, p. 34. This amount was obtained from the son's quarterly earnings for the year 2016 (April through June). See Exhibit A, p. 26. However, policy states that the Department cannot use such a method when calculating the son's actual income. Policy states that if improper reporting or budgeting of income caused the overissuance, the Department uses 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. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 715, p. 8. Because the Department did not use the son's actual income received for a portion of May 2016 and all of June 2016, the Department failed to satisfy its burden of showing that Respondent received an OI of FAP benefits for May and June of 2016. See BAM 715, p. 8. Nevertheless, the Department established an OI of FAP benefits for March 1, 2016 to April 30, 2016 and therefore, the Department is entitled to recoup [REDACTED] of FAP for this benefit period. See BAM 715, p. 8.

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** receive an OI of FAP program benefits in the amount of [REDACTED]

The Department is **ORDERED** to reduce the OI to [REDACTED] the period March 1, 2016 to April 30, 2016, and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

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]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

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

[REDACTED] [REDACTED]