



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: March 31, 2017
MAHS Docket No.: 16-009165
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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. This matter was scheduled for an October 26, 2016, hearing. On November 1, 2016, an Order Granting Adjournment of Disqualification Hearing and Scheduling Pretrial Hearing was issued on November 1, 2016. The pretrial hearing was held and the matter was scheduled for hearing on February 1, 2017. On February 3, 2017, an Order Granting Adjournment and Denying Transfer to Grand Rapids, Michigan was entered. On February 27, 2017, an Order for Change of Venue, Reassignment of ALJ and Order Denying Request to Participate by Telephone was issued scheduling the matter for hearing on March 1, 2017, at the Kent County Department office in Grand Rapids. After due notice, an in person hearing was held on March 1, 2017, from Grand Rapids, Michigan. The Department was represented by Assistant Attorney General [REDACTED]. [REDACTED] from the Office of Inspector General appeared and testified for the Department. The Respondent was represented by Attorney [REDACTED] of [REDACTED]. Respondent [REDACTED] [REDACTED] appeared but did not testify. Department Exhibits A, B, and C were admitted. Judicial Notice was taken of the previous Hearing Decision MAHS Docket No. 15-012500

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits for 12 months?

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 December 14, 2016, 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 submitted a redetermination form on June 3, 2011, stating that he had no employment income. (Dept. Ex. A)
5. On April 18, 2012, a Wage Match Client Notice was issued by the Department showing that Respondent had employment income from [REDACTED] (Dept. Ex. C)
6. Respondent was aware of the responsibility to report changes in income.
7. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2011, through April 30, 2012 (fraud period).
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 (1/1/16), p. 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; 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, a hearing was previously held that established that Petitioner received an overissuance of FAP benefits due to agency error for the time period between June 1, 2013, and April 30, 2014, and an overissuance due to client error for the time period between December 1, 2011, and April 30, 2012. (Hearing Decision of ALJ Suzanne Harris dated July 22, 2016) This decision did not address whether Respondent committed an IPV and whether there was a basis to sanction him.

The Department presented evidence that Respondent failed to report employment income from [REDACTED] and unearned income in the form of RSDI from the social security administration for himself and his wife during the time period in question. Respondent did not dispute and presented no evidence to contradict the Department's assertion that earned income and unearned income were received during the time period in question that was not reported. Respondent received more FAP benefits than he was entitled to because the earned income and unearned income were not budgeted.

Respondent was called to testify by the Department's attorney but he refused to testify upon advice of his attorney. Respondent's attorney asserted that since there was a possibility that Respondent could face criminal charges related to the failure to report income, he was within his rights to refuse to testify based on his 5th amendment right not to incriminate himself.

The Department has a high burden to establish an intentional program violation has occurred. The Department must prove by clear and convincing evidence that the client intentionally withheld or misrepresented information for the purpose of maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 The Department has established that Respondent failed to disclose earned and unearned income and as result received more benefits than he was entitled to during the time period in question. However, insufficient evidence was presented to prove by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining, increasing or preventing reduction or program benefits or eligibility. Without any direct testimony from the Respondent, or anyone else, about his motivations for failing to disclose the changes in income the Department has failed to meet its burden to establish an IPV. BAM 720 The mere fact that Respondent maintained his program benefits because of his failure to disclose income does not establish by clear and convincing evidence that he did so for the purpose of maintaining 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. 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. 13.

In this case, Respondent was found to not have committed an intentional program violation therefore no disqualification is warranted. BAM 720

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.

It is ORDERED that Respondent NOT be disqualified from FAP and that any sanction related to the alleged IPV be lifted.

AM/mc



Aaron McClintic
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

Counsel for Petitioner

[REDACTED]

DHHS

[REDACTED]

Petitioner

[REDACTED]

Counsel for Respondent

[REDACTED]

Respondent

[REDACTED]