



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: March 17, 2017
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 FIP and 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 FIP and FAP benefits for 24 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 [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 FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to changes in household group size to the Department within 10 days.
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] through [REDACTED] (FIP fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during the FIP fraud period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED] during the FIP fraud period.
9. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] through [REDACTED] (1st FAP 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 the 1st FAP fraud period.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED] during the 1st FAP fraud period.
12. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] (2nd FAP fraud period).
13. 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 the 2nd FAP fraud period.
14. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED] during the 2nd FAP fraud period.

15. This was Respondent's second alleged IPV.
16. 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 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.

Effective October 1, 2014, 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;

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 alleges that Respondent committed an IPV of her FIP and FAP benefits because she failed to notify the Department when her son was no longer living in the home. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented three applications Respondent submitted to the Department on April 23, 2009 September 15, 2009 and May 6, 2013, in which Respondent acknowledged that she had received the Information Booklet advising of “Things You Must Do”, which explained reporting change circumstances. However, this is not dispositive to show Respondent’s intent to withhold information for the purpose of receiving or maintaining FAP benefits. Respondent also submitted a Redetermination on [REDACTED]. Respondent reported that her son was living in the home on both applications and on the Redetermination.

Additionally, the Department presented correspondence from a Michigan school which revealed that Respondent’s son last attended school in Michigan in [REDACTED]. The

Department further presented correspondence from two schools in Nevada which revealed that Respondent's son was enrolled in school in Nevada from [REDACTED] through [REDACTED].

The [REDACTED] Redetermination and the [REDACTED] application were each submitted after Respondent's son was no longer residing in the home. Respondent submitted the documents under the penalty of perjury and provide misleading information to the Department. As such, it is found, that the Department has established that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FIP and FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (October 2009), p. 12. 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. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FIP and FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, the Department satisfied its burden of showing that Respondent committed an IPV concerning FIP and FAP benefits. The Department presented evidence to show that Respondent committed a prior IPV relating to FIP benefits and received a sanction from [REDACTED] through [REDACTED]. The Department further presented evidence to show that Respondent committed a prior IPV relating to FAP benefits and received a sanction from [REDACTED]. Accordingly, Respondent is subject to a 24 month disqualification under the FIP and FAP programs.

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. In this case, the Department is seeking recoupment of FIP and FAP benefits as it alleges that Respondent received more benefits than she was entitled.

The Department has alleged that Respondent was issued [REDACTED] in FIP benefits during the FIP fraud period. The Department has alleged that Respondent was issued [REDACTED] in FAP benefits during the 1st FAP fraud period. The Department has further alleged that Respondent was issued [REDACTED] in FAP benefits during the 2nd FAP fraud period.

The Department submitted budgets which revealed that Respondent would have been entitled to [REDACTED] in FIP benefits during the FIP fraud period if the change in group

size had been reported timely. The Department submitted budgets which revealed that Respondent would have been entitled to [REDACTED] in FAP benefits during the 1st FAP fraud period if the change in group size had been reported timely. The Department submitted budgets which revealed that Respondent would have been entitled to [REDACTED] in FAP benefits during the 2nd FAP fraud period if the change in group size had been reported timely. Therefore, the Department has established that an overissuance of FIP benefits occurred in the amount of [REDACTED] and has further established that an overissuance of FAP benefits in the total amount of [REDACTED]

DECISION AND ORDER

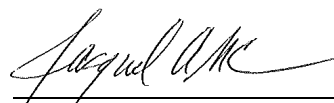
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV of FIP and FAP benefits.
2. Respondent did receive an OI of program FIP benefits in the amount of [REDACTED] from [REDACTED].
3. Respondent did receive an OI of program FAP benefits in the amount of [REDACTED] from [REDACTED].
4. Respondent did receive an OI of program FAP benefits in the amount of [REDACTED] from [REDACTED].

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

It is FURTHER ORDERED that Respondent is subject to a 24 month disqualification from FIP and FAP benefits.

JM/hw



Jacquelyn A. McClinton

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]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

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