



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]

Date Mailed: May 17, 2017
MAHS Docket No.: 15-003967-RECON2
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

REHEARING 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, 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 represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the FAP and FIP?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On an application for assistance dated [REDACTED], the Respondent acknowledged her duties and responsibilities including the duty to report starting employment and increases in earned income. (Department Exhibit pp. 9-26.)
2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

3. Respondent received monthly Supplemental Security Income (SSI) in the gross monthly amount of \$ [REDACTED]
4. Respondent failed to report that her husband started new employment on [REDACTED]. (Department Exhibit pp. 27-28.)
5. Respondent's husband received gross earned income of \$ [REDACTED] in [REDACTED] [REDACTED] (Department Exhibit p. 28.)
6. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from [REDACTED]. (Department Exhibit p. 30.)
7. Respondent received FIP benefits totaling \$ [REDACTED] from [REDACTED] [REDACTED]. (Department Exhibit p. 30.)
8. On [REDACTED], the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). (Department Exhibit pp. 4-7.)
9. 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. (Department Exhibit p. 2.)
10. This was Respondent's first established IPV.
11. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (January 1, 2016), pp. 12.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include starting new employment and increases in earned income. Department of Human Services Bridges Assistance Manual (BAM) 105 (October 1, 2016), pp. 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (April 1, 2016), p. 11. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (April 1, 2016), p. 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the

department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 12.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Spouses and their children must be included in the same FAP group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (November 1, 2012), p. 1.

On an application for assistance dated [REDACTED], the Respondent acknowledged her duties and responsibilities including the duty to report starting employment and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent's husband is the father of her children living in her home; he is a mandatory group member; and his income is countable towards the group's eligibility for FAP benefits. Respondent failed to report to the Department that her husband started new employment on [REDACTED]. If Respondent had reported the group's increase of income in a timely manner, then the Department would have redetermined their eligibility for FAP and FIP benefits by the benefit period after [REDACTED].

The husband's actual earnings in [REDACTED], were in the gross amount of \$ [REDACTED]. When combined with Respondent's SSI benefits and reduced by the \$ [REDACTED] standard deduction, the benefit group had a \$ [REDACTED] adjusted gross monthly income. Respondent's reported shelter expenses were less than 50% of her adjusted gross income; and therefore, she was not entitled to a deduction for those expenses.

Therefore, Respondent's net income was the same as her adjusted gross income. A group of five with a net income of [REDACTED] was entitled to a \$ [REDACTED] monthly allotment of FAP benefits in [REDACTED]. The group received a \$ [REDACTED] allotment of FAP benefits in [REDACTED] because the husband's income had not been reported to the Department. Therefore, the group received a \$ [REDACTED] OI of FAP benefits.

Respondent was an active FIP recipient in [REDACTED] and received a \$ [REDACTED] FIP grant. The income limit for a group of five to receive FIP benefits was \$ [REDACTED] Department of Health and Human Services Reference Table Manual (RFT) 210 (January 1, 2009), p. 1. Since the earned income Respondent's husband received in [REDACTED], exceeded the FIP income limit, the group was not eligible for any of the FIP benefits it received in [REDACTED]. Therefore, Respondent received a \$ [REDACTED] OI of FIP benefits.

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, 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).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

On an application for assistance dated [REDACTED], Respondent acknowledged her duties and responsibilities including the duty to report starting new employment and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent failed to report when her husband, a mandatory member of the FAP and FIP benefit groups, started new employment and began receiving earned income. The Department discovered this unreported income through its connection to Unemployment Insurance Agency's databases in [REDACTED], and it requested that Respondent verify this previously unreported income. The husband's employment ended in [REDACTED], but not before the group was issued FAP and FIP benefits that they would not have been eligible for if the income had been reported in a timely manner.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report her husband's earned income for the purpose of maintaining the group's eligibility for FAP benefits that they would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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 an FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation for FAP and FIP.


The Department has established an Intentional Program Violation (IPV).

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.
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]
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
5. It is FURTHER ORDERED that Respondent be disqualified from the FAP and FIP for a period of 12 months.

KS for MJB/jaf



Michael J. Bennane
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

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