



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.: 15-024897-RECON
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 rehearing was held on [REDACTED] [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 rehearing 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 Food Assistance Program (FAP) 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 Food Assistance Program (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. On [REDACTED] [REDACTED] [REDACTED], the Department received Respondent's completed Redetermination (DHS-1010) form where she acknowledged under penalties of perjury that the information on that form was true and complete. (Department Exhibit pp. 10-13.)
2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

3. On her [REDACTED], Redetermination form, Respondent reported a household size of six (6) that purchased and prepared food together. (Department Exhibit p. 11.)
4. The [REDACTED], Redetermination form indicated that Respondent's son, [REDACTED], acted as a translator for Respondent. (Department Exhibit p. 13.)
5. On [REDACTED] [REDACTED] [REDACTED], the Department received Respondent's completed Redetermination (DHS-1010) form where she acknowledged under penalties of perjury that the information on that form was true and complete. (Department Exhibit pp. 14-19.)
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. On her [REDACTED], Redetermination form, Respondent reported a household size of six (6) that purchased and prepared food together. (Department Exhibit p. 15.)
8. After receiving Respondent's [REDACTED], Redetermination form, the Department conducted an eligibility interview by telephone. (Department Exhibit pp. 14-19.)
9. During an interview with Respondent and her son [REDACTED] [REDACTED], the Department discovered that [REDACTED] had moved out of the home on [REDACTED]. (Department Exhibit p. 20.)
10. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
11. Respondent received FAP benefits as a group of six (6) totaling \$ [REDACTED] from [REDACTED]. (Department Exhibit pp. 21-22.)
12. As a group of five (5), Respondent would have been eligible for FAP benefits totaling \$ [REDACTED] from [REDACTED]. (Department Exhibit pp. 23-52.)
13. 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. 5-8.)
14. 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. 3.)
15. This was Respondent's first established IPV.
16. 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 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. 12-13.

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 a change in the number of persons in the household. 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.

Respondent was an ongoing FAP recipient on [REDACTED], when the Department received her completed Redetermination (DHS-1010) form where she reported a household size of six (6) that purchased and prepared food together. This form indicated that Respondent's son, [REDACTED], acted as a translator for Respondent.

On [REDACTED], the Department received Respondent's completed Redetermination form where she acknowledged, under penalties of perjury, that the information on that form was true and complete. On her [REDACTED], Redetermination form, Respondent reported to the Department that her household continued to consist of six (6) members that purchased and prepared food together. Following its receipt of the Redetermination form, the Department conducted a telephone interview with Respondent, and no corrections to the information used to determine her ongoing eligibility for FAP benefits was noted.

Later, the Department conducted a quality control examination of Respondent's eligibility to receive FAP benefits for [REDACTED]. The Department interviewed Respondent and her son, [REDACTED]. The Department discovered that [REDACTED] had moved out of Respondent's household on [REDACTED]. If Respondent had reported this change of household composition in a timely manner, the Department would have determined her eligibility for FAP benefits as a group of five (5) by the benefit period after [REDACTED].

From [REDACTED], Respondent received FAP benefits totaling \$ [REDACTED] as a group of six (6). As a group of five (5), Respondent would have been eligible for FAP benefits totaling \$ [REDACTED]. Therefore, Respondent received an FAP OI of \$ [REDACTED].

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 Redetermination forms received by the Department on [REDACTED], and [REDACTED] Respondent acknowledged under penalties of perjury that the information she had provided to the Department to determine her ongoing eligibility for FAP benefits was true and complete. 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 that her son was no longer living in her household as of [REDACTED]; but she continued to receive FAP benefits as if this person was an ongoing member of the FAP benefit group. As a result, Respondent received an OI of FAP benefits.

Respondent signed the [REDACTED], Redetermination form. By her signature she acknowledged that, under penalties of perjury, that the form she had submitted to the Department had been examined by or read to her, and to the best of her knowledge, the facts it reported to the Department on that form were true and complete. The information Respondent reported that there was no change to her household composition when in fact one member of the benefit group had moved out of the household.

Respondent apparently does not dispute that her household changed from a group of six (6) to a group of five (5) as of [REDACTED]. Respondent's written protest of the Department's notice to recoup the OI of FAP benefits indicates that there must have been a language barrier to her reporting the correct size of her household.

However, Respondent did not appear for her [REDACTED] disqualification hearing; and therefore, no evidence was entered into the hearing record to explain why she did not report her son leaving her household as of [REDACTED]. During a telephone interview discussing the information received by the Department on [REDACTED] Respondent was able to accurately update the Department concerning other aspects of her benefits case affecting her eligibility to receive continuing FAP benefits. No evidence was entered on the record why there was a language barrier preventing her from reporting that a member of the household was no longer living with her as indicated on the [REDACTED], Redetermination form, and had not been for over six months.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report a change in the number of people living in her household for the purposes of maintaining her eligibility for FAP benefits that she would not have been eligible to receive 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 a FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation.


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