



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.: 16-013438
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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

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 FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report 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 (fraud period) is [REDACTED].
7. The Department alleges that during the fraud period Respondent was issued \$[REDACTED] in FAP benefits by the State of Michigan but was entitled to \$[REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$[REDACTED].
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 U.S. 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 October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500 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), p. 5.

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 his reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or his 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 concerning his FAP benefits because he intentionally withheld information concerning his son's employment income in order to receive or maintain FAP benefits from the State of Michigan. Generally, a child under age 22 living with his parent is a mandatory member of that parent's FAP group, and employment income received by an FAP group member over age 18 is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 2-6; BEM 501 (July 2014), p. 2; BEM 212 (July 2014), p. 1. If the child is age 18 through 49 and enrolled half-time or more in a vocational, trade, business or technical school or a regular curriculum at a college or university, that child is excluded from the FAP group unless one of the exceptions in policy applies, which includes the student being employed for at least 20 hours per week and paid for such employment. BEM 245 (July 2014), pp. 3-4).

In his [REDACTED], application, Respondent indicated that his son [REDACTED] (C), who based on a reported [REDACTED], birthdate was [REDACTED] years old as of the application date, had quit his employment because he was going to school full-time (Exhibit A, pp. 23-24). In the redetermination he completed on [REDACTED], C was no longer reported as a student, and no income was reported in the household. (Exhibit A, pp. 37-38). However, the employment verifications obtained by the Department establish that C was employed at the time Respondent submitted the application and redetermination. Therefore, Respondent misinformed the Department when he asserted that there was no income in the household. Because Respondent did not report his son's employment, the Department presented clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of his FAP benefits. Under these circumstances, the Department has established that Respondent committed an IPV concerning his FAP case.

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. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first IPV, he is subject to a one-year disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of an FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$ [REDACTED] during the fraud period but was eligible for only \$ [REDACTED] in FAP benefits during this period once his son's employment income is budgeted, resulting in an FAP OI of \$ [REDACTED].

To establish the FAP OI amount, the Department presented FAP OI budgets for each month of the fraud period during which an OI was alleged. Because Respondent did not report that his son was a student in the [REDACTED] redetermination, C would be included in Respondent's FAP group as a mandatory FAP group member because he was under age [REDACTED] and living in the home with his father, and, as an eligible FAP group member over age [REDACTED] his income would be considered in the calculation of Respondent's FAP eligibility from [REDACTED], the last month of the fraud period. However, the Department failed to establish that C should have been included in Respondent's FAP group for the period from [REDACTED], either as a student who met an exception to the FAP exclusion for students or because he was not a student. Therefore, the Department failed to establish an FAP OI for [REDACTED].

With respect to the FAP OI from [REDACTED], documentation from the Department's system shows that Respondent's daughter was not in his home from [REDACTED] (Exhibit A, pp. 95-97). Thus, in determining the FAP OI, the FAP OI budgets for [REDACTED] and [REDACTED] properly show that Respondent's FAP group had two members (Respondent and his son C) and the FAP OI budgets for [REDACTED] properly show that Respondent's FAP group had three members (Respondent, his son C, and his daughter). However, the FAP OI budget for [REDACTED] shows only two FAP group members, and it is unclear whether Respondent's son C was added back to the group that month where there is no evidence presented that his daughter was reported out of the household again. Therefore, the Department failed to establish an FAP OI for [REDACTED].

A review of the FAP OI budgets for the remaining months, [REDACTED] shows that the Department properly considered C's actual income from employment for each month. The Department's FAP OI budgets show that the Department concluded that Respondent had excess gross income for FAP eligibility for [REDACTED] and [REDACTED] (Exhibit A, pp. 87-90). For a two-person FAP group, the FAP gross income limit is \$ [REDACTED] RFT 250 (December 2013), p. 1. Although the Department applied the incorrect gross income limit, Respondent's son's actual income exceeded the gross income for [REDACTED] but not for [REDACTED]. Therefore, the Department failed to show that there was an FAP OI for [REDACTED] but did establish that Respondent was not eligible for any of the \$ [REDACTED] in FAP benefits he was issued in [REDACTED].

The remaining FAP OI budgets for [REDACTED] show the calculation of Respondent's FAP eligibility based on his household's net income. Because Respondent did not timely report his son's employment income, the 20% earned income deduction was properly not applied in the calculation of the household's net income. BAM 720, p. 10. A review of the FAP OI budgets shows that, when C's income is used in calculating Respondent's household's net income, Respondent was eligible for FAP benefits totaling \$ [REDACTED] for [REDACTED]. RFT 260 (October 2014), pp. 13, 17, 20, 23).

The benefit summary inquiry shows that from [REDACTED], Respondent received \$ [REDACTED]. Because he was only eligible for \$ [REDACTED] in FAP benefits during this time, he was over issued \$ [REDACTED].

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in over-issued FAP benefits for [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.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program for [REDACTED].

The Department is ORDERED to reduce the FAP OI amount to \$ [REDACTED] and initiate recoupment and/or collection procedures in accordance with Department policy for an FAP OI in the amount of \$ [REDACTED] less any amounts already recouped and/or collected.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.

ACE for MJB/jaf



Alice C. Elkin
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]