



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 10, 2017
MAHS Docket No.: 16-016884
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 or around [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 changes in her circumstances such as changes in employment and income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
7. During the fraud period, the Department alleges that 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 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 January 1, 2016, 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), pp. 5, 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), pp. 7-8; 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, Respondent completed an assistance application on [REDACTED], and reported that she was employed and earning income, which the Department asserted made her a simplified reporter. The Department alleged that Respondent committed an IPV of the FAP because she failed to report when her household's income exceeded the income limit for Simplified Reporting (SR) groups, resulting in an OI of FAP benefits. The Department presented Verification of Employment for Respondent's husband, a mandatory group member, showing that he gained employment on [REDACTED], received his first paycheck on [REDACTED], and continued to be employed throughout the fraud period. (Exhibit A, pp. 33-35). The Department asserted that the income exceeded the SR limit in [REDACTED]; and as a result, Respondent was overissued FAP benefits in the amount of \$ [REDACTED] from [REDACTED].

Employment income is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 1-6. FAP recipients who are simplified reporters are required to report income only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200 (December 2013), p. 1. No other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine its total gross income at the end of that month; and if the total gross income exceeds the group's SR income limit, the group must report this change to the Department by the 10th day of the following month. BAM 200, p. 1. For failure to report income over the limit, the first month of the OI is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6.

The Department sends the client simplified reporting information which explains the reporting requirements based on their circumstances at the time of issuance. The DHS-1605 Notice of Case Action is sent to provide the specific income limit for the group based on the group size. BAM 200, p. 2. Although the Department presented the [REDACTED] assistance application submitted by Respondent, which advises of the general rights and responsibilities, the Department did not present any evidence, such as a Notice of Case Action to support its testimony that Respondent was advised of her responsibilities as a simplified reporter during the alleged fraud period.

Additionally, the Department did not present an Assistance Application, Redetermination, Semi-Annual Contact Report or other similar evidence on which Respondent fails to disclose that her group's income exceeded the SR limit for her household size. After a thorough review of the evidence presented, the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit an IPV.

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 ten years for an 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department failed to satisfy its burden of showing that Respondent committed an FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP.

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 a 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.

At the hearing, the Department presented a FAP Benefit Summary Inquiry to establish that the State of Michigan issued \$█ in FAP benefits to Respondent from █. (Exhibit A, pp. 36). The Department contended that Respondent's failure to report when her group's income exceeded the SR limit caused an OI of FAP benefits in the amount of \$█ as the Department alleged that Respondent was eligible for \$█ in FAP benefits during this period. (Exhibit A, p. 37). For failure to report income over the simplified reporting limit, the first month of the OI is two months after the actual monthly income exceeded the limit. BAM 200, p. 405; BAM 720, p. 7. In this case, Respondent's husband's employment income exceeded the simplified reporting income limit in █. Therefore, the Department properly began the OI period for the unreported income in █.

In support of its FAP OI case, the Department presented Respondent's verification of employment detailing his pay dates and amounts earned. The Department also presented FAP OI Budgets for each month in the fraud period to show how the \$█ OI was calculated. (Exhibit A, pp. 37-41). A review of the budgets shows that when the unreported income is included in the calculation of the group's FAP eligibility, Respondent was eligible to receive \$█ during the fraud period. Thus, the Department is entitled to recoup or collect from Respondent \$█ in FAP benefits, which is the difference between the \$█ in FAP benefits actually issued and the \$█ in FAP benefits he was eligible to receive.

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 of the FAP.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amount already recouped/collected.



ZAB/jaf

Zainab A. Baydoun
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]