



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 16, 2017
MAHS Docket No.: 16-016931
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 April 18, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Did Respondent receive an over-issuance (OI) of State Disability Assistance (SDA) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On December 22, 2012, Respondent's two disabled sons, went into the custody of their father, [REDACTED]. Both sons receive Supplemental Security Income (SSI) benefits.
2. In February 2013, Respondent reported that her two sons were no longer in her household.
3. On May 13, 2014, Respondent was sent a Redetermination (DHS-1010) for her Food Assistance Program (FAP) and State Disability Assistance (SDA) eligibility. The form had her two sons listed as members of Respondent's household.
4. On June 16, 2014, Respondent signed and submitted the Redetermination (DHS-1010) form. Respondent did not cross out the names of her two sons. She wrote that they attended an Autism Program at [REDACTED]. Respondent resided in [REDACTED] at the time. On the form Respondent indicated she had no income source and no annual income.
5. On July 1, 2014, Respondent began receiving \$ [REDACTED] per month of Food Assistance Program (FAP) benefits. Using the net income calculated in the July 2014, Food Assistance Program (FAP) over-issuance budget in evidence, for a benefit group of 3, Reference Table 260 Food Assistance Issuance Tables effective from November 1, 2013 through September 30, 2014, indicates Respondent should have received \$ [REDACTED] per month.
6. On July 1, 2014, Respondent began receiving \$ [REDACTED] per month of State Disability Assistance (SDA) benefits.
7. On September 1, 2014, Respondent began receiving \$ [REDACTED] per month of Food Assistance Program (FAP) benefits.
8. On October 1, 2014, Respondent began receiving \$ [REDACTED] per month of Food Assistance Program (FAP) benefits.
9. As of January 1, 2015, there is no evidence in this record indicating if Respondent still received Food Assistance Program (FAP) benefits, and if so how much she received.
10. On June 16, 2015, Respondent was sent a Redetermination (DHS-1010) for her Food Assistance Program (FAP) and State Disability Assistance (SDA) eligibility. The form had her two sons listed as members of Respondent's household.
11. On July 8, 2015, Respondent signed and returned the Redetermination (DHS-1010) form. On the form she indicated a new address, added her mother as a member of the household, and wrote that her two sons were out of the household.

12. The Investigation Report (MDHHS-4652) Department Exhibit A page 4, states: “from April 04, 2013 through June 08, 2014, MDHHS applications show that the subject did report her two children were out of the home”; “Bridges Case Comments reports that on July 13, 2015, the subject reported to her MDHHS Specialist that her children had been out of the home since January 2015”; and “An Agency error occurred from April 04, 2013 through June 08, 2014; therefore; recoupment proceedings will only occur for the time period of July 01, 2014 through July 31, 2015. This case will be referred for an Administrative Hearing”.
13. The Food Assistance Program (FAP) over-issuance budgets submitted by the Department contain unearned income representing the boys’ Supplemental Security Income (SSI) benefits.
14. The Department has submitted no direct evidence which shows that Respondent reported the boys were back in her household, or that she was receiving the boys’ SSI payments even though they were not in her household.
15. The Department has not submitted evidence that shows the Department complied with Bridges Administration Manual (BAM) 210 Redetermination/Ex Parte Review, Bridges Administration Manual (BAM) 130 Verification and Collateral Contacts, Bridges Eligibility Manual (BEM) 261 Disability – SDA, or Bridges Eligibility Manual (BEM) 503 Income, Unearned. When the June 16, 2014, Redetermination (DHS-1010) was submitted, the Department was required conduct an interview with Respondent before FAP could be approved and then verify that Respondent was receiving the boys’ SSI payments in order to determine eligibility for FAP. The Department was also required to verify the sons were in the household and verify the need for Respondent to provide care for the boys in order to determine eligibility for SDA.
16. The Department has failed to meet its evidentiary burden of submitting clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).
17. The Department has failed to meet its evidentiary burden of showing that Respondent received an over-issuance of FAP benefits.
18. The Department has failed to meet its evidentiary burden of showing that any recoupable SDA over-issuance occurred.

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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

In this case, Respondent reported that her sons were out of the household in February 2013. The Investigation Report states that “from April 04, 2013 through June 08, 2014, MDHHS applications show that the subject did report her two children were out of the home” and that “An Agency error occurred from April 04, 2013 through June 08, 2014”. The May 13, 2014, Redetermination (DHS-1010) sent to Respondent for her Food Assistance Program (FAP) and State Disability Assistance (SDA) eligibility again listed the two boys as members of the household. The continued negligence of the Department leaving the boys on Respondent’s case and the Department’s failure to comply with the requirements of Bridges Administration Manual (BAM) 130 and obtain required verifications before issuing benefits, does not constitute an Intentional Program Violation (IPV) by Respondent.

The Department has failed to meet its evidentiary burden of submitting clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

OVER-ISSUANCE
Over-issuance Period

BAM 705 Agency Error Over-Issuance states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 12 months before the date the over-issuance was referred to the RS, whichever 12 month period is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

Department policy, in the form of BAM 705, creates a limitation (12 months) on the amount of an Agency Error over-issuance that may be recouped. As noted above, the evidence in this record states that an Agency Error over-issuance has been identified from April 04, 2013 through June 08, 2014. The alleged IPV over-issuance in this case is a continuation of the already identified Agency Error over-issuance.

The evidence in this record is insufficient to determine if an Agency Error over-issuance has already been established against this Respondent. Therefore, it cannot be determined from the evidence in this record if the alleged over-issuance period is correct in accordance with BAM 705.

Over-issuance Amount

BAM 705 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. An over-issuance amount cannot be calculated until a proper over-issuance period is determined. The evidence in this record is insufficient to determine a proper Agency Error over-issuance period. Therefore, the evidence is insufficient to determine any possible over-issuance amount.

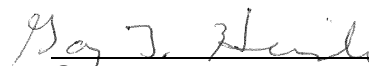
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department HAS NOT established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department HAS NOT established that Respondent received an over-issuance of benefits.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are REVERSED. No disqualification may be imposed on Respondent nor any collection actions taken on Respondent.

GH/nr



Gary Heisler
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]

DHHS

[Redacted]

Respondent

[Redacted]