



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.: 16-017078
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], Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared for the hearing and represented herself.

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 changes in her circumstances to the Department, such as changes in group composition, household size and employment/income of household members.
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 is [REDACTED], (fraud period).
7. The Department alleges that, during the fraud period, 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. (Exhibit A, p. 4)
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 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 alleged that Respondent committed an IPV of the FAP because she failed to report that the father of her children, [REDACTED], a mandatory group member, was living in her home and that he was earning income.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within 10 days of receiving the first payment reflecting the change. Changes such as persons living in the home must be reported to the Department within 10 days after the client is aware of them. BAM 105 (March 2013), pp.7-11.

The Department contended that Respondent's failure to accurately report her group composition caused an OI in FAP benefits in the amount of \$ [REDACTED] from [REDACTED] [REDACTED]. The Department asserted that after including Mr. [REDACTED] as a member of Respondent's FAP group and including his unreported earned income in the calculation of the group's FAP eligibility, the group was eligible for \$ [REDACTED] in FAP benefits during the alleged fraud period.

In support of its contention that Respondent committed an IPV, the Department presented a redetermination signed by Respondent on [REDACTED], and submitted to the Department on [REDACTED], as well as a second redetermination signed by Respondent on [REDACTED], on which she reports herself and two children as group members but does not include [REDACTED] as a household member. (Exhibit A, pp. 11-22).

The Department maintained that [REDACTED] was living with Respondent during the time the redeterminations were completed. The Department asserted that the address information obtained from a CLEAR report for [REDACTED] shows Respondent's home address, and the Unemployment Compensation Benefit (UCB) search shows that [REDACTED] was using Respondent's address for employment purposes. Although Department policy provides that parents and their children who live together are mandatory group members and must be included as household members, the Department must establish that [REDACTED] lived in the home with Respondent for the entire fraud period as alleged and as required by FAP group composition policy. See BEM 212 (October 2013/July 2014).

For FAP group composition purposes, living with, means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Additionally, the person cannot be temporarily absent from the home. A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true: the person's location is known; the person lived with the group before an absence; there is a definite plan for return; and the absence has lasted or is expected to last 30 days or less. BEM 212 (October 2013/July 2014), pp. 1-3.

At the hearing, Respondent confirmed that [REDACTED] was the father of her two children. Respondent testified that [REDACTED] moved in with her in [REDACTED] prior to the fraud period and began using her address for employment purposes. Respondent stated that he left her home and moved in with his mother on [REDACTED] [REDACTED] in [REDACTED], also prior to the alleged fraud period. Respondent credibly testified that [REDACTED] would come to her home to visit with his children and would sometimes stay with her. Respondent testified that she and [REDACTED]

would often fight, and he would leave the home to return to his mother's. She further stated that [REDACTED] also used his mother's address for mail purposes.

After thorough review of the evidence presented, the Department has failed to establish that [REDACTED] and Respondent lived together for FAP group composition purposes. Further, the Department failed to establish that [REDACTED] absences were temporary, thereby requiring that he be included in the FAP group. Because the Department did not establish that [REDACTED] lived with Respondent during the entire fraud period, the Department failed to establish that he was a mandatory group member and that Respondent committed an IPV by failing to report his living in the home and his income.

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 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.

At the hearing, the Department presented a FAP Benefit Summary Inquiry to establish that the State of Michigan issued \$ [REDACTED] in FAP benefits to Respondent from [REDACTED] [REDACTED]. (Exhibit A, pp. 23-26). The Department contended that Respondent's failure to report Mr. [REDACTED] in the home and his income caused an OI of FAP benefits in the amount of \$ [REDACTED] as the Department alleged that Respondent's group was eligible for \$ [REDACTED] in FAP benefits during this period. (Exhibit A, p. 4).

Although the Department presented a FAP Benefit Summary Inquiry showing the amount of FAP benefits that the State of Michigan issued to Respondent during the [REDACTED] fraud period and FAP OI budgets in an attempt to explain how the alleged OI was calculated, because as discussed above, the Department failed to establish that [REDACTED] was living with Respondent and a mandatory member of Respondent's FAP group, it follows that the Department failed to establish that Respondent was over issued FAP benefits as a result of her alleged failure to report his income. As such, the Department is not entitled to recoupment as an OI was not established.

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.
2. Respondent **did not** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to delete the \$ [REDACTED] FAP OI and cease any recoupment and/or collection action.

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]