



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 19, 2017
MAHS Docket No.: 16-017566
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 received FAP benefits issued by the Department as a simplified reporting (SR) group.
4. Respondent was aware of the responsibility to report income that exceeded the SR limit (Exhibit A, p. 32).
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 289898, as amended, 7 USC 28911 to 28936a 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 48989.189; the Social Welfare Act, MCL 48989.1-.119b; and Mich Admin Code, R 48989.389891 to .38915.

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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 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 her FAP benefits because she intentionally withheld information concerning the employment income of her living-together partner (LTP) in order to receive or maintain FAP benefits from the State of Michigan. Specifically, the Department alleges that Respondent underreported the LTP's income and did not report that his income exceeded the SR limit that applied to her group. Employment income is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 2-6. 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.

The Department alleges that at the time of application, Respondent underreported the LTP's income with SWAT Consulting (Employer), and as a result, the household's gross income exceeded the SR limit at the time of application. In support of its allegations, the Department presented (i) the application Respondent submitted to the Department on [REDACTED]; (ii) the Notice of Case Action sent to Respondent on [REDACTED], notifying her that she was approved for FAP as a simplified reporter; (iii) a wage match printout from the Department's system showing that the LTP had earnings from Employer in the second quarter of [REDACTED] (iv) a verification of employment completed by Employer showing the LTP's income by date; (v) a benefit summary inquiry showing that Respondent received FAP benefits during the fraud period; and (vii) FAP OI budgets for each month during the fraud period showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in determining her FAP eligibility and allotment at the time of issuance.

In her [REDACTED], application, Respondent asserted that the LTP was paid \$ [REDACTED] for [REDACTED] hours of weekly employment. The paycheck verifications she provided showed \$ [REDACTED] in gross income paid by Employer to the LTP on [REDACTED], and \$ [REDACTED] in gross income paid by Employer to the LTP on [REDACTED], (Exhibit A, pp. 29-30). In the Notice of Case Action sent to her on [REDACTED] Respondent was notified that her FAP eligibility was based on budgeted earned income of \$ [REDACTED] and that she was required to report when her gross income exceeded the SR income limit for her [REDACTED]-person FAP group size (Exhibit A, p. 32). The SR limit for an FAP group with six members during the fraud period was \$ [REDACTED] RFT 250 (October 2014), p. 1. This is consistent with the SR limits identified in the Notice. Therefore, Respondent was properly advised of her reporting obligations.

The verification of employment completed by Employer shows that in [REDACTED], the LTP received gross income in excess of \$ [REDACTED] and in [REDACTED], he received gross income in excess of \$ [REDACTED]. The Department testified that Respondent never reported the LTP's employment in excess of the SR limit, and it was discovered by the Department through a wage match. A wage match is a computerized cross match of employment information clients provide to the Department with that in the database maintained by the Michigan Unemployment Insurance Agency containing information provided by employers. BAM 802 (January 2016), p. 1. Because Respondent did not report the LTP's excess employment income, the Department presented clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of her FAP benefits. Under these circumstances, the Department has established that Respondent committed an IPV concerning her 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 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/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, she 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 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.

In this case, the Department alleges that Respondent received FAP benefits totaling \$ [REDACTED] during the fraud period but was eligible for \$ [REDACTED] in FAP benefits during this period once the LTP's income from Employer is budgeted. The benefit summary inquiry establishes that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period (Exhibit A, p. 70).

Generally, for failure to report income over the SR limit, the first month of the FAP OI is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6. However, because the LTP's income at the time of the [REDACTED], application made Respondent's household ineligible for simplified reporting, Respondent's FAP OI began at the time of application. To establish the FAP OI amount, the Department presented FAP OI budgets for each month of the fraud period to show the FAP benefits Respondent was eligible to receive if the LTP's unreported income had been included in the calculation of Respondent's household's FAP eligibility for each month. A review of

the FAP OI budgets for shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10.

Based on a [REDACTED]-person FAP group, Respondent was not eligible for FAP benefits when her household's gross income exceeded \$ [REDACTED] RFT 250 (October 2014), p. 1. Because the LTP's income exceeded the gross income limit for [REDACTED], [REDACTED] and [REDACTED], Respondent was not eligible for any of the FAP benefits issued to her those months. Although the Department also contended that Respondent's FAP income exceeded the gross income limit for FAP eligibility for [REDACTED], the Department applied the incorrect gross income limit; and the LTP's income plus unearned child support income that month (a total of \$ [REDACTED] was below the gross income limit. Because the Department failed to show the household's net income to establish that Respondent was not eligible for, or overissued, FAP benefits based on the LTP's income for [REDACTED], the Department failed to establish an OI of FAP benefits for [REDACTED].

For the remaining months of the fraud period, the FAP OI budgets show Respondent's FAP eligibility based on her net income. Because Respondent did not timely report the LTP's employment income, the LTP's income was not eligible for the 20% earned income deduction in the calculation of the household's net income. BAM 720, p. 10. A review of the recalculated net income in the FAP OI budgets shows that, when the LTP's income from employment is taken into consideration, Respondent's household was eligible for \$ [REDACTED] in [REDACTED] and \$ [REDACTED] in FAP benefits for [REDACTED]. Therefore, the Department established that that Respondent was not eligible for any FAP benefits during the fraud period other than \$ [REDACTED] the sum of the \$ [REDACTED] she received for [REDACTED] that the Department was unable to establish was over-issued and the \$ [REDACTED] she was eligible to receive in [REDACTED]. Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] for over-issued FAP benefits during the fraud period, the difference between the \$ [REDACTED] she received and this \$ [REDACTED] sum.

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], to [REDACTED].

The Department is ORDERED reduce the FAP OI amount to \$ [REDACTED] 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/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 389 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 389 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) 335-68988; 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 389639
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]