



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 12, 2017
MAHS Docket No.: 16-017858
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], 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.

At the hearing, the OIG agent testified that the address it provided to the Michigan Administrative Hearing System (MAHS) for Respondent was the best available address for Respondent. It was a hotel address and, when the OIG agent went to the hotel, Respondent did not appear to be residing there. However, because the hotel address was the address Respondent had provided to the Department and was the address on file with the Secretary of State as of November 2016 and because the OIG agent was not able to uncover a more recent address from its CLEAR database, the OIG agent concluded that the address provided to MAHS was the best available address. Notice of the IPV hearing sent to Respondent by the MAHS to the address provided was not returned by the post office as undeliverable. Therefore, the hearing proceeded to address the Department's FAP IPV allegations. See BAM 720, p. 12.

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 (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 his FAP benefits because he intentionally withheld information concerning his employment income in order to receive or maintain FAP benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 2-6. FAP recipients who are not simplified reporters are required to report starting employment. BAM 105 (July 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) applications Respondent submitted to the Department on [REDACTED], and [REDACTED] (ii) a printout from the Work Number, a Department-accessible database where employers voluntarily report employee employment information, concerning Respondent's employment with [REDACTED] (Employer); (iii) Notices of Case Action sent to Respondent on [REDACTED], and [REDACTED], showing that he was approved for FAP benefits based on income of \$ [REDACTED] (iv) a Benefit Summary Inquiry showing that Respondent received FAP benefits during the fraud period; and (v) 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 the determining his FAP eligibility and allotment at the time of issuance.

Respondent began receiving employment income from Employer on [REDACTED], and received ongoing, consistent weekly pay (Exhibit A, pp. 70-71). On [REDACTED], Respondent submitted an application to the Department stating that he had no employment income (Exhibit A, p. 26). However, the Work Number report shows that, contrary to his assertion, he was receiving employment income at the time he completed his application. The Department presented evidence showing that Respondent was notified via the [REDACTED], Notice of Case Action that his FAP benefits were based on \$ [REDACTED] of income, and he was advised of his responsibility to timely report changes. Because Respondent did not report his 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 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, 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 income from Employer is budgeted. The Benefit Summary Inquiry establishes that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period (Exhibit A, pp. 32-34).

Based on Respondent's receipt of his first paycheck from Employer on [REDACTED] and in consideration of the 10-day reporting period from the 10-day processing period and the 12-day negative action period, the Department properly began budgeting Respondent's income from Employer beginning with the [REDACTED] FAP budget. BAM 105, p. 10; BAM 720, p. 7.

To establish the FAP OI amount, the Department presented FAP OI budgets for each month of the fraud period, [REDACTED], to show the FAP benefits Respondent was eligible to receive if his unreported income had been included in the calculation of his FAP eligibility for each month. A review of the FAP OI budgets for [REDACTED] shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10.

Because Respondent did not timely report his employment income, he 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 Respondent's income from employment is taken into consideration, Respondent, based on his single-person FAP group, was eligible for \$ [REDACTED] in FAP benefits for each month during the fraud period other than [REDACTED] [REDACTED], and [REDACTED] when he was eligible for \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] respectively. RFT 260 (October 2014), pp. 4, 7, 8-21; RFT 260 (October 2015), pp. 6, 7, 8. Therefore, he was eligible for a total of \$ [REDACTED] in FAP benefits during the fraud period. However, at the time of issuance he received a total of \$ [REDACTED] in FAP benefits for those months (Exhibit A, p. 67).

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in FAP benefits issued to him, the difference in the \$ [REDACTED] he received during the fraud period and the \$ [REDACTED] he was eligible to receive those months.

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 initiate recoupment and/or collection procedures in accordance with Department policy for a 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 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]