



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: [REDACTED] May 30, 2017
MAHS Docket No.: 16-019191
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 [REDACTED], Michigan.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 28 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for 12 months?

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 FAP program benefits. [Dept. Exh. 1, 4].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 26-28].
4. On [REDACTED], Respondent submitted a Redetermination indicating he was not attending school. [Dept. Exh. 12-16].
5. On [REDACTED], Respondent submitted a Redetermination indicating he was attending school part-time. [Dept. Exh. 17-22].
6. On [REDACTED], the Department verified that Respondent had been attending [REDACTED] since [REDACTED], and he did not meet the requirements for FAP. [Dept. Exh. 24-26].
7. Respondent was aware of the responsibility to report changes in school attendance and student status within 10 days. [Dept. Exh. 13, 19].
8. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 12, 18].
9. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], through [REDACTED]. [Dept. Exh. 1, 4].
10. 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 no benefits during this time period. [Dept. Exh. 26-28].
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]. [Dept. Exh. 1, 4].
12. This was Respondent's first alleged IPV. [Dept. Exh. 1, 4].
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US 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 Office of Inspector General requests Intentional Program Violation hearings for the following cases:

- Willful overpayments of \$500.00 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, p 12 (1/1/2016).

Student Status

According to Department Policy BEM 245, effective April 1, 2011, clients in student status are no longer eligible to receive FAP benefits based solely on an approved education plan. A person is in student status if the person is 18 through 49 years old and enrolled half-time or more in a: (i) vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate; or a regular

curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245, p 4.

In order for a person in student status to be eligible for FAP benefits, they must meet one of the following criteria:

- Receiving Family Independence Program benefits.
- Enrolled in an institution of higher education as a result of participation in:
 - A Job Training Partnership Act program.
 - A program under Section 236 of the Trade Readjustment Act of 1974.
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year. To qualify under this student status eligibility provision, the student must be approved for work study during the school term and anticipate actually working during that time, unless exempted because the student:
 - Starts the month the school term begins or the month work study is approved, whichever is later.
 - Continues until the end of the month in which the school term ends, or when you become aware that the student has refused a work-study assignment.
 - Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.
- Providing more than half of the physical care of a group member under the age of six.

- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does **not** live with his or her natural, adoptive or stepparent. BEM 245.

For the care of a child under age six, the department shall consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. Moreover, when determining the availability of adequate child care for a child between the ages of six and 11, another person in the home, over 18 years of age, need not be a FAP group member to provide care. BEM 245, p 5.

A person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245, p 5.

The Department verified with [REDACTED] with Respondent had been attending part-time since [REDACTED], without notifying the Department. The Department's representative also stated that Respondent did not meet the requirements of "student status" during the fraud period to receive FAP benefits.

Intentional Program Violation

Suspected IPV means an overissuance 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 720, p 1; BAM 700, p 6.

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 intentionally failed to report that he was attending college part-time. Respondent's signature on the FAP application dated [REDACTED], certifies that he was aware that fraudulent participation in FAP could result in criminal, civil, or administrative claims. Because of Respondent's failure to report that he was attending college and the fact he did not meet the student status requirements, he received an OI and the Department is entitled to recoup \$ [REDACTED].

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 a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. 18. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1 (4/1/2016). 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. 17.

In this case, Respondent is disqualified for 12 months.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1 (1/1/2016). In this case, Respondent received an overissuance of \$ [REDACTED] based on his failure to report his college attendance and his failure to meet the requirements of "student status."

DECISION AND ORDER

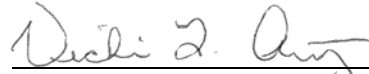
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

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.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP for a period of 12 months.

VLA/bb



Vicki Armstrong
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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]