



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 15, 2017
MAHS Docket No.: 16-019348
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Bennane

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 by Administrative Law Judge Michael Bennane on February 22, 2017, 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. 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?

FINDINGS OF FACT

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

1. On April 7, 2015, Respondent submitted an online Assistance Application (DHS-1171) for Food Assistance Program (FAP), State Disability Assistance (SDA) and Medical Assistance (MA) benefits. On the application Respondent indicated he had no earned income. Respondent electronically signed the application certifying

notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

2. On April 8, 2015, Respondent participated in a telephone interview with a Department case worker. (Page 28 of IPV digital case file) The caseworker recorded that a consolidated inquiry had been run and showed that Respondent had been hired by [REDACTED] on 04/03/2015. The caseworker also recorded that a Verification of Employment (DHS-38) was sent [REDACTED] and that Respondent told her he completed a job interview at [REDACTED] on 03/30/2015 and was still waiting to hear.
3. On April 17, 2015, Respondent received his first paycheck from [REDACTED]. The check was for 4.5 hours of work completed during the pay period ending on April 12, 2015. (Page 31 of IPV digital case file)
4. Bridges Administration Manual (BAM) 130 Verification and Collateral Contacts (10-1-2014) stated that verification should be obtained when "Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party." Either the Department did not obtain verification of whether Respondent was employed, or did not use the earned income in determining his Food Assistance Program (FAP) eligibility. The alleged over-issuance in this case is an Agency Error over-issuance.
5. On November 24, 2015, the Department sent a Verification of Employment (DHS-38) to [REDACTED]
6. On November 30, 2015, the Department received Respondent's employment information from [REDACTED]. The Verification of Employment (DHS-38) states that Respondent began employment on March 30, 2015, received his first paycheck on April 17, 2015, was paid weekly on Fridays and was laid off. [REDACTED] also sent Respondent's income history to the Department.
7. In accordance with Bridges Administration Manual (BAM) 705, June 1, 2015 through November 30, 2015 has been determined as a proper over-issuance period associated with this Agency Error over-issuance.
8. During the over-issuance period Respondent received a \$ [REDACTED] Agency Error over-issuance of Food Assistance Program (FAP) benefits.

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.

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, the Department presented evidence which shows that the Department caseworker had run a consolidated inquiry for Respondent and it showed that he had been hired by [REDACTED] on April 3, 2015. The evidence also shows that Petitioner participated in a telephone interview with the caseworker on April 8, 2015 and told her that he completed a job interview at [REDACTED] on 03/30/2015 and was still waiting to hear.

The Department is alleging that Respondent's statement to the caseworker is fraudulent and that he began employment on March 30, 2015. Respondent's income history, in evidence, does not support that assertion. Respondent received his first paycheck from [REDACTED] on Friday April 17, 2015 for 4.5 hours of work done during the pay period ending Sunday April 12, 2015.

The evidence in this record DOES NOT constitute clear and convincing evidence that Respondent committed an IPV. The evidence in this record shows that either the Department did not comply with BAM 130 to obtain verification of Respondent's employment status or did not include any reported earned income in his Food Assistance Program (FAP) financial eligibility budget. Any Food Assistance Program (FAP) over-issuance shown here is an Agency Error over-issuance.

OVER-ISSUANCE

Over-issuance Period

Bridges Administration Manual (BAM) 705 Agency Error Over-Issuances (7-1-2014) states that a Food Assistance Program (FAP) over-issuance period begins the first month (or first pay period for CDC) when 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. It also states that

In this case, the Department alleges an over-issuance period from June 1, 2015 through November 30, 2015. This over-issuance period complies 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. The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$ [REDACTED] of Food Assistance Program (FAP) benefits during the over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent's gross earned income exceeded the gross income limit in every month of the over-issuance period. Recoupment Specialist was not eligible for any Food Assistance Program (FAP) benefits during the over-issuance period. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

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 established that Respondent received a \$ [REDACTED] Agency Error over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

It is ORDERED that the Department of Health and Human Services may not impose an Intentional Program Violation (IPV) disqualification on Respondent.



GHforMB

Michael Bennane
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]