



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 9, 2017
MAHS Docket No.: 17-002928
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). The Respondent appeared 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 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.

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 her FAP benefits because she intentionally withheld information concerning employment income received by her husband in order to receive or maintain FAP benefits from the

State of Michigan. 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 not simplified reporters are required to report (i) starting or stopping employment, (ii) changing employers, (iii) change in rate of pay, and (iv) change in work hours of more than five hours per week that is expected to continue for more than one month. BAM 105 (October 2014 and April 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) an application Respondent submitted to the Department on [REDACTED]; (ii) a Semi-Annual Contract Report Respondent submitted to the Department on [REDACTED]; (iii) a printout from the Department's system of the case comments screen showing the comments made by Respondent's worker concerning Respondent's case by date entered; (iv) a report from the Work Number, a Department-accessible database in which employers voluntarily report employee employment information, concerning Respondent's husband's employment data, including the start date of employment and income paid, with his employer, [REDACTED] (Employer); 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 her FAP eligibility and allotment at the time of issuance.

In her [REDACTED], application, Respondent reported that she had employment (Exhibit A, p. 20). In the [REDACTED], Semi-Annual Contact Report, Respondent was asked if her household's monthly gross income had changed by more than \$[REDACTED] than the \$[REDACTED] that was being then budgeted and if anyone had a change in earnings because they started a job. Respondent replied "no" to both questions. (Exhibit A, p. 29). The evidence shows that Respondent's husband received his first paycheck from Employer on [REDACTED], (Exhibit A, p. 36).

Respondent failed to report her husband's employment in the Semi-Annual Contact Report she submitted to the Department on [REDACTED], even though her husband was employed by Employer (Exhibit A, p. 29). The Department testified that Respondent did not report this income to the Department. Rather, the worker's case comments indicate that the Department became aware of the income through its access to the Work Number showed that Respondent's husband had been employed with Employer (Exhibit A, p. 39). Because Respondent did not disclose her husband's income, the Department established that there was 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 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 the husband's income from Employer is budgeted. The Department presented an Issuance Summary that showed that Respondent was issued \$[REDACTED] in monthly FAP benefits for [REDACTED] and [REDACTED], for a total of \$[REDACTED] in FAP benefits for those two months. However, the Department has failed to present evidence to establish the monthly FAP benefits that were issued to Respondent during the remainder of the fraud period, [REDACTED]. The Department did not provide an Eligibility Summary or Benefit Summary Inquiry to establish the monthly FAP benefits Respondent received during the fraud period. The [REDACTED], Notice of Case Action that advised Respondent that she was approved for monthly FAP benefits of \$[REDACTED] from [REDACTED] was insufficient to establish that she was actually issued those monthly FAP benefits. Therefore, the Department cannot establish an FAP OI for [REDACTED].

With respect to the FAP OI for [REDACTED] and [REDACTED], the Department presented FAP OI budgets for each month to show the FAP benefits Respondent was eligible to receive if her husband's income had been included in the calculation of her FAP eligibility for each month. A review of the FAP OI budgets shows that the Department considered the 10-day reporting period from the husband's receipt of his first paycheck from Employer on [REDACTED], the 10-day processing period and the 12-day negative action period when it began budgeting the earned income from Employer with the [REDACTED] budget. BAM 105, p. 10; BAM 720, p. 7.

The FAP OI budgets conclude that, once Respondent's husband's income was budgeted, her household had excess income for FAP eligibility. The budgets show that FAP eligibility was based on a three-person FAP group; based on Respondent's [REDACTED] application, the household consisted of Respondent, her husband, and their minor child. (Exhibit A, pp. 14-16); BEM 212 (July 2014), p. 1. For [REDACTED] and [REDACTED], a three-person FAP group must have gross income less than \$[REDACTED] to be eligible for FAP benefits. RFT 250 (October 2014), p. 1.

A review of each of the FAP OI budgets for [REDACTED] and [REDACTED] shows that the Department properly considered Respondent's husband's actual income each month. BAM 720, p. 10. When this income is taken into consideration in calculating Respondent's household's income, the household had excess gross income for FAP eligibility, consistent with the FAP budgets. Therefore, Respondent was not eligible for any of the \$[REDACTED] in FAP benefits issued to her during the fraud period.

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in FAP benefits issued to Respondent from [REDACTED].

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 reduce the FAP OI amount to \$ [REDACTED] and 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]
[REDACTED]

Respondent

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

DHHS

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