



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 8, 2017
MAHS Docket No.: 17-003391
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 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 FAP?

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 not aware of the responsibility to changes in circumstances including starting employment and 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 periods it is considering the fraud periods are [REDACTED], (period 1); [REDACTED], (period 2); and [REDACTED], (period 3), (fraud periods).
7. During the fraud periods, Respondent was issued the following FAP benefits for each of the alleged fraud periods: Period 1, issued \$ [REDACTED] over issued \$ [REDACTED] Period 2, issued \$ [REDACTED] over issued \$ [REDACTED] and Period 3, issued \$ [REDACTED] over issued \$ [REDACTED]. The FAP benefits issued by the State of Michigan during the fraud periods totaled \$ [REDACTED] and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during these time periods. The Department alleges that the total overissuance is \$ [REDACTED]
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 January 1, 2016, 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 (1/1/16), pp. 12-13.

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 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 700 (October 1, 2016), p. 6; 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 seeks an IPV for three separate time periods during which the Department alleges that the Respondent failed to timely report to the Department changes in circumstance, namely starting of employment for both herself and her husband. The three periods will be analyzed separately.

Period 1

The Department alleges that during the period [REDACTED], and [REDACTED], the Respondent received an OI of FAP benefits and committed an IPV due to her failure to report her husband starting work for [REDACTED] on [REDACTED], and ending employment on [REDACTED]. During this period, the Respondent did not report her husband's employment to the Department. The Respondent completed a change of address but did not indicate any change in household employment or that her husband had been working. The Respondent never reported any of the income earned during this period. Thus, the Department has established by clear and convincing evidence that the Respondent committed an IPV due to making no effort to report the income. Exhibit A, pp. 37-38.

Period 2

The Department alleges that during the period [REDACTED] [REDACTED] the Respondent received an OI of FAP benefits and committed an IPV due to her failure to report that she was employed beginning [REDACTED], with [REDACTED] with her employment ending on [REDACTED]. Exhibit A, p. 61. This employment was never reported to the Department. Thus, the Department has established by clear and convincing evidence that the Respondent committed an IPV due to making no effort to report the income.

Period 3

The Department alleges that during the period [REDACTED], the Respondent received an OI of FAP benefits and committed an IPV because she failed to report that her husband began working for [REDACTED] on [REDACTED], and did not report the employment until [REDACTED]. A verification of employment for Respondent's spouse, indicates that during the month of [REDACTED] he was employed by [REDACTED] for part of that month and quit. Exhibit A, p. 102. In addition, the Respondent's spouse also began work for [REDACTED] on [REDACTED], which was not reported until [REDACTED]. Exhibit A, p. 38.

In this case, the Department seeks an IPV due to failure to timely report employment and income by Respondent.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount.. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (October 1, 2016), p. 12.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 12.

Based upon the evidence presented for the three periods in question, the evidence presents a pattern that establishes that Respondent failed to report the income timely in all three instances; and for the first two time periods, 1 and 2, the Respondent never reported the employment. During Period 3, the Respondent reported late that her husband began working in [REDACTED] in [REDACTED].

Based upon the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. The Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented her income during the fraud periods.

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. 16. 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. 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.

In this case, as discussed above, the Department has established an IPV and satisfied its burden of showing that Respondent committed an IPV of her FAP benefits. Thus, the Department is entitled to a finding of a disqualification of Respondent 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 the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In this case, the Department presented OI budgets for the periods in question. The three periods: Period 1, issued \$ [REDACTED] over issued \$ [REDACTED] Period 2, issued \$ [REDACTED] over issued \$ [REDACTED] and Period 3, issued \$ [REDACTED] over issued \$ [REDACTED]. The FAP benefits issued by the State of Michigan during the fraud periods totaled \$ [REDACTED] and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during these time periods. The Department alleges that the total OI is \$ [REDACTED]. The Department seeks an OI due to the failure to timely report starting employment.

The FAP OI budgets were examined at the hearing and were determined to be correct. Exhibit A, pp. 72, 109 and 57. The budgets included Respondents' income from [REDACTED], for Respondent's husband, and Respondent's income as outlined above that was not previously budgeted because it was not reported by the Respondent and is based upon a wage verifications received from the Respondent's employer and the Worker number. In addition, the Department provided a Benefit Summary Inquiry which established that Petitioner received FAP benefits during the periods in question. Exhibit A, p. 116. Thus, the Department has established that it is entitled to recoup \$ [REDACTED] for the three periods in question.

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 FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection 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**.

LMF/jaf



Lynn M. Ferris
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]