



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 22, 2017
MAHS Docket No.: 17-003392
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) and Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and FIP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and FIP 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 and FIP 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 FAP fraud period (FAP fraud period) is [REDACTED].
7. The Department alleges that during the FAP 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. The Department's OIG indicates that the time period it is considering the FIP fraud period (FIP fraud period) is [REDACTED].
10. The Department alleges that during the FIP fraud period Respondent was issued \$[REDACTED] in FIP benefits by the State of Michigan but was entitled to \$[REDACTED] in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$[REDACTED].
12. This was Respondent's first alleged FAP IPV and first alleged FIP IPV.
13. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her or her 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 and FIP benefits because she intentionally withheld information concerning her employment income in order to receive or maintain 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 and FIP recipients 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 (April 2015 and April 2016), pp. 11-12.

In support of its IPV case against Respondent, the Department presented (i) an application Respondent submitted to the Department on [REDACTED]; (ii) a redetermination Respondent submitted to the Department on [REDACTED] (iii) Notices of Case Action sent to Respondent on [REDACTED], and [REDACTED] showing that she was approved for FAP benefits based on income of \$ [REDACTED] (iv) a Notice of Case Action sent to Respondent on [REDACTED], showing that she was approved for FIP benefits based on \$ [REDACTED] in budgetable income; (v) a printout from the Work Number, a Department-accessible database where employers voluntarily report employee employment information, concerning Respondent's employment with [REDACTED] (Employer); (vi) benefit summary inquiries showing the FAP and FIP benefits Respondent received during the fraud period for each program; (vii) FAP OI budgets for each month during the FAP 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; and (viii) FIP OI budgets for each month during the FIP fraud period showing the calculation of FIP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in the determining her FIP eligibility and allotment at the time of issuance.

On [REDACTED], Respondent submitted a redetermination to the Department stating that she had no income (Exhibit A, p. 28). Respondent began receiving employment income from Employer on [REDACTED], and information from the Work Number shows ongoing, consistent weekly pay (Exhibit A, pp. 108-109). Therefore, Respondent had income at the time of redetermination that she did not disclose to the Department. In her redetermination, Respondent certified that the information she provided was true and acknowledged that she could be prosecuted for fraud and/or required to repay the

amount wrongfully received due to having misrepresented, hidden, or withheld facts that caused her to receive assistance she should not have received (Exhibit A, p. 31). Because Respondent did not report her employment, the Department presented clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of her FAP and FIP benefits. Under these circumstances, the Department has established that Respondent committed an IPV concerning her FAP and FIP 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 under both FIP and FAP, she is subject to a one-year disqualification from receipt of FAP benefits and a one-year disqualification from receipt of FIP benefits due to IPV.

Overissuance

In this case, the Department alleges that, because Respondent failed to timely report her employment income, she received FAP and FIP benefits she was ineligible to receive. 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 or FIP 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.

FAP OI

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 her income from Employer is budgeted, resulting in Respondent being overissued \$ [REDACTED] in FAP benefits during the FAP fraud period. The benefit summary inquiry establishes that Respondent was issued \$ [REDACTED] in FAP benefits during the FAP fraud period.

The Department properly considered the 10-day reporting period from Respondent's receipt of the first payment from employment on February 26, 2015, the 10-day processing period and the 12-day negative action period when determining to begin budgeting Respondent's employment income in [REDACTED]. BAM 105, p. 7; BAM 720, p. 7. To establish the OI amount, the Department presented FAP OI budgets for each month during the FAP fraud period other than [REDACTED] showing the FAP benefits Respondent was eligible to receive if the budgets had taken into consideration her employment income. Because the Department did not present an FAP OI budget for [REDACTED], it has failed to satisfy its burden of showing that Respondent was over issued \$ [REDACTED] in FAP benefits that month.

A review of the remaining FAP OI budgets for shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10. Because Respondent did not timely report her employment income, she 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 provided shows that, when Respondent's income from employment is taken into consideration, Respondent was eligible for \$ [REDACTED] in FAP benefits. Additionally, because the Department failed to establish the FAP OI for [REDACTED], she was eligible for the \$ [REDACTED] issued to her for that month. Therefore, she was eligible for FAP benefits totaling \$ [REDACTED]. However, at the time of issuance, she received a total of \$ [REDACTED] in FAP benefits during the FAP fraud period (Exhibit A, p. 67). Therefore, she was overissued \$ [REDACTED] in FAP benefits.

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

FIP OI

The Department also alleges that, due to her employment income, Respondent was ineligible for any FIP benefits issued to her during the FIP fraud period. In order for a FIP recipient to continue to be eligible for FIP benefits, the individual must establish "financial need." BEM 518 (July 2013 and October 2015), p. 1. Financial need for an ongoing FIP recipient is established when an issuance deficit test shows that the individual's budgetable income exceeds the certified group's payment standard by at least \$ [REDACTED]. BEM 518, pp. 1, 3. In this case, Respondent was receiving FIP benefits for a two-person FIP group, and, therefore, the applicable payment standard was \$ [REDACTED]. RFT 210 (December 2013), p. 1. In determining Respondent's budgetable income at the time she received her employment income, the Department was required to deduct \$ [REDACTED] from her countable earnings and then deduct an additional 50% of her countable earnings. BEM 518, p. 5.

The Department presented FIP OI budgets for each month during the fraud period showing the amount of FIP benefits Respondent was eligible to receive if her earned income had been properly budgeted in determining her FIP eligibility and allotment (Exhibit A, pp. 70-88). A review of the budgets shows that the Department properly considered Respondent's actual monthly income for each month in the FIP fraud period; although the Department miscalculated Respondent's actual income for [REDACTED], the error is in Respondent's favor. In determining her budgetable income, the Department properly reduced Respondent's monthly income, as calculated, by the \$ [REDACTED] disregard and then the 50% disregard. Based on her budgetable income for each month during the FIP fraud period, Respondent was eligible for \$ [REDACTED] in FIP benefits in [REDACTED], \$ [REDACTED] in FIP benefits for [REDACTED] and \$ [REDACTED] in FIP benefits for the remaining months. However, during the FIP fraud period, she received \$ [REDACTED] in FIP benefits.

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in overissued FIP benefits, the difference between the \$ [REDACTED] in FIP benefits she received during the FIP fraud period and the \$ [REDACTED] in FIP benefits she was eligible to receive.

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 of FAP and FIP.
2. Respondent **did** receive an FAP OI in the amount of \$ [REDACTED] for [REDACTED].
3. Respondent **did** receive an FIP OI in the amount of \$ [REDACTED] for [REDACTED], to [REDACTED].

The Department is ORDERED to do the following:

1. 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;
2. Initiate recoupment and/or collection procedures in accordance with Department policy for a FIP OI in the amount of \$ [REDACTED] less any amounts already recouped and/or collected;
3. Personally disqualify Respondent from FAP eligibility for a period of **12 months**.
4. Personally disqualify Respondent from FIP eligibility 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]