



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: June 27, 2017
MAHS Docket No.: 16-013450
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) and FIP Cash Assistance (FIP) 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 and FIP Cash Assistance (FIP)?

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 Cash Assurances benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in circumstances that could affect benefit amounts and report changes in income in a timely manner.
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 period is [REDACTED] for FAP and [REDACTED], for FIP (fraud period).
7. 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 \$ [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. During the fraud period, Respondent was issued \$ [REDACTED] in FIP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$ [REDACTED]
11. This was Respondent's **third** alleged IPV for FIP benefits resulting in a request by the Department for lifetime disqualification. Exhibit A, Hearing Summary.
12. At the time of the hearing request by OIG, the Respondent was already disqualified for Lifetime, barring her from receiving FAP benefits. Exhibit A, Hearing Summary.
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 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 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 is requesting that the Respondent be found to have committed an IPV of both her FAP and FIP benefits due to failing to report employment when she began working for [REDACTED] and other employers on [REDACTED], and for [REDACTED] on [REDACTED]. Exhibit A, pp. 49-51. In support of its contention that the Respondent failed to disclose her employment, the Department presented a Semi-Annual Contact Report received [REDACTED], that was completed by Respondent and advised the Department that Respondent was not working. Exhibit A, p. 61. A Redetermination was also completed by Respondent on [REDACTED], that also indicated that FIP Cash Assistance was the only income she received. Exhibit A, p. 66.

The Department presented a Verification of Employment for Respondent with the employer [REDACTED] with the first pay being received [REDACTED], and the last pay received [REDACTED]. Exhibit A, pp. 50-51. An Income Search was also presented that demonstrated employment of the Respondent for the second, third and fourth quarters of [REDACTED] with [REDACTED] the [REDACTED], and [REDACTED]. Exhibit A, p. 47.

Based upon the evidence presented by the Department it was established that the Respondent had earnings that she failed to report when employed by these employers for the periods demonstrated which caused her to receive FIP and FAP benefits she

was not otherwise entitled to receive. In addition, the Department presented FAP and FIP Benefit Issuance Summaries demonstrating that the Respondent received monthly benefits for the period while employed with unreported earnings. The Issuance Summary for FAP benefits demonstrates that each month Respondent received an OI beginning [REDACTED]. Exhibit A, pp. 84-85. The FIP Cash Summary also showed an OI for each month and that Respondent was ineligible for every month beginning [REDACTED]. Exhibit A, pp. 82-83.

While recipients of FAP and FIP benefits are required to report changes in income and starting employment, Respondent failed to do so. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (December 1, 2011), p. 5.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (December 1, 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

After a review of the entire record and the evidence presented, it is determined that the Department has established an IPV for FAP and FIP Cash Assistance by clear and convincing evidence as the Respondent never at any time during the two reviews, the Semi-Annual Contact Report and the Redetermination Report that she was working and receiving income.

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 10 years for an 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, the Department did establish by clear and convincing evidence that the Respondent failed to report her employment and income from employment during the period she was receiving FIP and FAP benefits and that an IPV was established; and thus, the Department is entitled to a finding of disqualification of Respondent from receipt FIP benefits, this being Respondent's third FIP disqualification; and Respondent's FAP was already subject to a lifetime disqualification.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to

receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, (May 1, 2014), p. 7.

The Department presented monthly FAP budgets to establish the OI amounts. The budgets were reviewed at the hearing and are correct as presented. The budgets begin with [REDACTED]. The OI budgets list the income included for each employer and demonstrate that as a result of not reporting employment and earnings from employment the Respondent received more FAP benefits that Respondent was entitled to receive. Exhibit A, pp. 69-79.

The Department presented monthly FIP Cash Assistance budgets to establish the OI amounts. The budgets were reviewed at the hearing and are correct as presented. The budgets begin with [REDACTED]. The OI budgets list the income included for each employer and demonstrate that as a result of not reporting employment and earnings from employment the Respondent received more FIP benefits than Respondent was entitled to receive. Exhibit A, pp. 52-59.

When the earned income from employment is added to the FAP budget calculations and the FIP budget calculations, the income totals for each month's net income during the fraud period caused the Respondent to receive more FAP and FIP benefits than Respondent was entitled to receive because the original FAP and FIP benefit amounts were based upon the Respondent receiving only minimal income from Cash Assistance as that was the only income used to calculate FAP. No income was used to determine FIP benefits as the Respondent reported no income. A review of the OI budgets at the hearing and further review by the undersigned found them to be correct. The Department also presented a Benefit Issuance Summary Inquiry to establish that Petitioner received FAP and FIP benefits throughout the OI period. See Exhibit A, pp. 84-85, for FAP; pp. 82-83, for FIP.

For the period [REDACTED], the Respondent was overissued \$ [REDACTED] in FAP benefits. For the period [REDACTED], the Respondent was overissued \$ [REDACTED] in FIP benefits.

Thus, the Department has established that it is entitled to recoup a total of \$ [REDACTED] for the FAP and FIP benefit OIs during the fraud period.

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 her FAP and FIP benefits.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED].

3. Respondent **did** receive an OI of FIP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] (FAP) and \$ [REDACTED] (FIP) in accordance with Department policy. The total overissuance for both programs is \$ [REDACTED]

It is FURTHER ORDERED that Respondent be disqualified from FIP for a period of **lifetime**.

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]