



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.: 16-014427
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). The Respondent was represented by [REDACTED].

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 aware of the responsibility to report changes in circumstances, including changes in group 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 is [REDACTED], (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 \$0 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 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 alleges that Respondent committed an IPV concerning her FAP benefits because she intentionally withheld information concerning the employment income of her husband after they were married on [REDACTED]. The income from the Respondent's husband caused the income of the FAP group to exceed the gross income limit and also exceeded the simplified reporting (SR) limit for Respondent of \$ [REDACTED]. Specifically, the Department alleges that Respondent failed to report her husband's income and did not report that his income exceeded the SR limit that applied to her group. 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 simplified reporters are required to report income only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200 (December 2013), p. 1. No other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine its total gross income at the end of that month, and if the total gross income exceeds the group's SR income limit, the group must report this change to the Department by the 10th day of the following month. BAM 200, p. 1.

The notification to the Respondent that she was a simplified reporter and her responsibilities was made known to Respondent by a Notice of Case Action sent to her on [REDACTED], advising the Petitioner that she was approved and increased for FAP benefits and that her benefits would be \$ [REDACTED] a month [REDACTED] ongoing. The benefits were based upon earned income of \$ [REDACTED] and self-employment income of \$ [REDACTED] for a group of two members. **The Notice also advised the Respondent that the only change she was required to report for FAP is when the household income exceeds the limit listed below, \$ [REDACTED] for a household size of two. Exhibit A, p. 27.** In addition to the Notice, a Simplified Six-Month Review was also sent to the Respondent on [REDACTED], advising her that she must report changes in household members, and household earned income if changed by more than \$ [REDACTED] together with proof of current income from the last 30 days.

The Department presented testimony that the first time it learned of Respondent's marriage was during a Medicaid redetermination when a marriage license was provided in [REDACTED]. The marriage certificate indicated that Respondent was married on [REDACTED]. The Respondent's FAP closed when she failed to complete a Six-Month Review in [REDACTED], which was not returned. The Respondent's FAP closed in [REDACTED].

Although the Respondent testified that she advised the Department by mail of her marriage shortly after being married and that she also provided paystubs for her husband's employment, no such record was found to have been received by the Department. Further, the Respondent received a Notice of Case Action previously referred to above, advising her that should her household income exceed \$ [REDACTED] she was required to report same. This Notice was sent on [REDACTED], two weeks after

the Respondent was married; thus, she was on notice that a change in income must be reported. Looking at the Respondent's husband's pays as confirmed by the Verification of earnings received from his employer, the Respondent's and her spouse pays added together exceeded the gross income limit for FAP. The [REDACTED] FAP budget for a group of three persons showed income of \$ [REDACTED] which exceeded not only the simplified reporting limit but also the income limit for FAP eligibility. Exhibit A, p. 60. The Department also sent a Simplified Six-Month Review to the Respondent on [REDACTED] [REDACTED] also two weeks after she was married, once again advising her to report changes in income.

Because Respondent did not report her husband's excess employment income, the Department presented 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 ten years for a 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 \$ [REDACTED] in FAP benefits during this period once her husband's income from employment is budgeted. The benefit summary inquiry establishes that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period (Exhibit A, p. 58-74).

Generally, for failure to report income over the SR limit, the first month of the FAP OI is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6. Thus, the Department correctly started the OI period in September 2014. To establish the FAP OI amount, the Department presented FAP OI budgets for each month of the fraud period to show the FAP benefits Respondent was eligible to receive once her

spouse's unreported income had been included in the calculation of Respondent's household's FAP eligibility for each month. A review of the FAP OI budgets for shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10.

Based on a three-person FAP group, Respondent was not eligible for FAP benefits when her household's gross income exceeded \$ [REDACTED] RFT 250 (October 2014), p. 1; Exhibit A, p. 60. Because the spouse's income exceeded the gross income limit for [REDACTED] ongoing, Respondent was not eligible for any of the FAP benefits issued to her those months ([REDACTED]). Exhibit A, pp. 60-75.

Because Respondent did not timely report her spouse's employment income, the spouse's income was not eligible for the 20 percent earned income deduction in the calculation of the household's net income. BAM 720, p. 10. A review of the recalculated FAP OI budgets shows that, when the spouse's income from employment is taken into consideration, Respondent's household was eligible for \$ [REDACTED] throughout the fraud period. Therefore, the Department established that that Respondent was not eligible for any FAP benefits during the fraud period. Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] for overissued FAP benefits during the fraud period.

DECISION AND ORDER

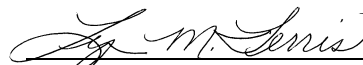
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
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]