



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

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██████ Mailed: June 28, 2017
MAHS Docket No.: 16-016533-RECON
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION
ON REHEARING**

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 June 15, 2017, from Detroit, Michigan. The Department was represented by ████████ Regulation Agent of the Office of Inspector General (OIG). 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 and State Emergency Relief (SER) benefits that the Department is entitled to recoup?

PROCEDURAL HISTORY

1. On October 20, 2016, the Department requested a hearing alleging that Respondent committed an IPV concerning her FAP case and was overissued FAP and SER benefits.
2. A hearing on the Department's request was scheduled on January 12, 2017.

3. On January 12, 2017, the hearing was held in Respondent's absence.
4. On January 27, 2017, the undersigned issued a Hearing Decision for Intentional Program Violation finding that (i) the Department established that Respondent committed a FAP IPV, (ii) Respondent received a FAP OI of [REDACTED] and (iii) Respondent did not receive a SER OI.
5. On February 21, 2017, the Michigan Administrative Hearing System (MAHS) received Respondent's request for rehearing/reconsideration.
6. In an Order granting Request for Rehearing issued March 17, 2017, Supervising Administrative Law Judge Lauren Van Steel granted Respondent's request for rehearing.
7. The rehearing initially scheduled on April 24, 2017 was adjourned.
8. The rehearing was held before the undersigned on June 15, 2017.

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 October 20, 2016, 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 FAP program benefits.
3. Respondent was a recipient of FAP and SER 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 responsibility.
6. The Department's OIG indicates that the time period it is considering the FAP fraud period (fraud period) is February 1, 2011 to May 31, 2015.
7. During the FAP fraud period, the Department alleges that 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 FAP IPV.
10. The Department's OIG indicates that the time period it is considering the SER fraud period (SER fraud period) is October 8, 2012 to November 6, 2012.
11. During the SER fraud period, the Department alleges that Respondent was issued [REDACTED] in SER benefits by the State of Michigan but was entitled to \$0 in such benefits during this time period.
12. The Department alleges that Respondent received an OI in SER benefits in the amount of [REDACTED]
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US 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.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 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 (January 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 her

employment income 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 (January 2010 and 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 (January 2011), p. 7; BAM 105 (April 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) applications Respondent submitted to the Department on October 8, 2012; April 15, 2013; January 11, 2014; and June 30, 2015 (Exhibit A, pp. 29-43, 44-60, 61-73, 74-88); (ii) the response from ██████████ (Employer) to the Department's subpoena for information concerning Respondent's employment since 2010 showing 2016 income paid to Respondent by payday and amount and total annual income paid to Respondent in 2012, 2013, 2014, and 2015 (Exhibit A, pp. 12-16); (iii) an employee wage history showing Respondent's quarterly wages reported by Employer to the ██████ beginning the first quarter of 2010 (Exhibit A, pp. 17-20); (iv) a benefit summary inquiry showing that Respondent received FAP benefits during the FAP fraud period (Exhibit A, pp. 90-97); and (v) and 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 (Exhibit A, pp. 98-191).

The subpoena completed by Employer shows that Respondent had begun employment on March 8, 2010 and continued to be employed through the July 26, 2016 date Employer completed its response to the subpoena. Respondent did not report any income from Employer to the Department in the applications she submitted on October 8, 2012; April 15, 2013; January 11, 2014; or June 30, 2015. At the hearing, Respondent explained that she was an "on call" employee for Employer and was in lay-off status when she applied for benefits in 2012, 2013 and 2015. She contended that she always reported her income and, to support her argument that income from Employer was being budgeted by the Department, she pointed out that there were months on the benefits summary inquiry showing her receipt of less FAP benefits than other months. A review of the benefit summary inquiry shows that for most months of the FAP fraud period (other than months in which Respondent applied during the month), Respondent received the maximum FAP benefits available for her two-person FAP group. She did not receive the maximum for March 2012 to May 2012, and June 2013 to December 2013, and a review of the FAP budgets for those months shows that the Department was budgeting client-reported unemployment income, not income from Employer. Therefore, the evidence does not show that Respondent's income from Employer was ever being budgeted. The Department testified that Respondent never reported her employment with Employer. While Respondent may not have been receiving employment income from Employer at the time she applied, it is clear from the wage match history that Respondent received employment income during the course of her receipt of FAP benefits. The Department explained that it had been informed by

Employer that, because of a change in its computer system, it was unable to access and provide evidence of payments made to Respondent for each pay period since 2010. The OIG agent testified that income information was therefore accessed from the wage information in the consolidated inquiry, which confirmed that Respondent received income from Employer for each quarter from the first quarter of 2010 through the first quarter of 2016. Because Respondent's FAP allotment did not change except when unemployment benefits were being budgeted, the evidence shows that Respondent's employment income from Employer was not being budgeted and supports the Department's position that Respondent did not report this income.

Respondent also argued that she never applied for or received FAP benefits in 2014 and contends that she was a victim of identity fraud that year. The January 2014 application identifies Respondent as the applicant and identifies the same social security number, birthdate, and address as the other applications. Although Respondent asserted that she had filed a police report alleging identity theft and had proceedings to address identity theft concerning her tax return and unemployment benefits, she did not provide any documentation to support her assertions. In the absence of such evidence, Respondent has failed to counter the Department's evidence that she was issued, and received, FAP benefits in 2014.

The Department has presented clear and convincing evidence that Respondent had employment that she intentionally failed to report. This is sufficient to establish 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. In this case, the Department alleges that Respondent was overissued FAP and SER benefits.

FAP OI

The amount of a 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 ██████ during the FAP fraud period but was eligible for only ██████ in FAP benefits during this period once her income from Employer was budgeted.

The evidence established that ██████ in FAP benefits were issued to Respondent during the fraud period (Exhibit A, pp. 90-97). To establish the OI amount, the Department presented FAP OI budgets for each month during the FAP fraud period it purports shows the FAP benefits Respondent was eligible to receive if her income had been included in the calculation of her FAP eligibility for each month.

In determining Respondent's monthly income from Employer for the FAP OI budgets, the Department testified that, because Employer was unable to provide actual amounts received, it used Respondent's quarterly wages, as reported by Employer to the State and as shown on the employee wage history, and determined an average monthly amount. The Department acted in accordance with policy when it used information from the consolidated inquiry when unavailable from the employer, particularly where Respondent did not provide any more accurate income information. See BAM 720, p. 10; BAM 802 (October 2016), p. 3. However, for FAP only, the Department may not convert the averaged monthly income reported on the wage match to a monthly amount by multiplying average weekly pay by a 4.3 multiplier. BAM 720, p. 10; BEM 505 (July 2016), p. 9. A review of the FAP OI budgets shows that the Department improperly converted the monthly income from Employer from the wage match to a standard monthly amount in March 2011, May 2011, June 2011, February 2012, March 2012, and May 2012. Therefore, the Department has failed to establish that Respondent was overissued ██████ as alleged in the FAP OI budgets for those months. A review of the remaining FAP OI budgets shows that the Department properly calculated Respondent's monthly income based on the wage match history. Therefore, the Department has established the FAP OI for those remaining months.

Thus, the Department is entitled to recoup and/or collect from Respondent ██████ in FAP benefits issued to her during the fraud period, the difference between the ██████ FAP OI alleged by the Department reduced by the \$█████ FAP OI it failed to establish.

SER OI

The Department alleges that Respondent was overissued SER benefits because, when her unreported income is considered in the calculation of her SER eligibility, she was not income-eligible for SER assistance for energy services. SER assistance is available

to assist low-income households with heat and electric costs if the household meets all SER eligibility requirements. Department of Health and Human Services Emergency Relief Manual (ERM) 301 (October 2012), p. 1. A SER overpayment is an amount of assistance issued to a SER group that the group was not eligible to receive. ERM 404 (March 2013), p. 1. The Department attempts to obtain repayment from the SER group of all SER overpayments. ERM 404, p. 1.

For a group to be eligible for SER energy services, which provides assistance with heat and electric costs, the combined monthly *net* income that is received or expected to be received by all SER group members in the 30-day countable income period beginning on the date the signed SER application is submitted cannot exceed the standard for SER energy/LIHEAP services for the number of group members. ERM 208 (October 2012), p. 1; ERM 301, pp. 1, 4. Income can be verified from an electronic data exchange with reliable income source. ERM 206, p. 6.

In this case, Respondent had a two person SER group. ERM 201 (June 2010), p. 1; Exhibit A, pp. 32-22. For a group size of two, the applicable SER income limit is [REDACTED] ERM 208, p. 4. If Respondent's group's net income during the 30-day countable income period exceeds this limit, the SER request must be denied. ERM 208, p. 1; ERM 206 (October 2011), p. 1.

In this case, Respondent applied for SER assistance with energy services on October 8, 2012 and indicated that she only had employment as a home care provider (Exhibit A, pp. 29-43). At the hearing, she denied having any other income. The consolidated inquiry showed that during the fourth quarter of 2012, which would be the quarter within which Respondent's applicable 30-day period fell within, Respondent had income totaling [REDACTED] from Employer and no income from the identified home care provider. Because the income is from the quarterly wage match, it is unclear how much income Respondent received during the 30-day countable income period as compared to the remaining period in the quarter. However, even if Respondent's income from Employer is considered, Respondent was income eligible for SER benefits. The quarterly income averaged for the applicable three month period results in monthly income of [REDACTED]. This income, reduced by a [REDACTED], results in net income of [REDACTED]. See ERM 206, p. 4. Although Respondent reported other employment in her application, there was no other income showing as budgeted by the Department in the October 2012 and November 2012 FAP budgets. Because [REDACTED] in net income is less than the [REDACTED] SER energy income limit, the Department has failed to establish that Respondent was not income eligible for SER assistance with energy services. Therefore, the Department has not established that it is entitled to recoup and/or collect from Respondent the [REDACTED] in SER assistance issued on her behalf during the SER 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 a FAP OI of program benefits in the amount of [REDACTED]
3. Respondent **did not** receive a SER OI of program benefits.

The Department is ORDERED to do the following:

1. Reduce the FAP OI to [REDACTED] and initiate recoupment and/or collection procedures in accordance with Department policy for such amount, less any amounts already recouped and/or collected.
2. Delete the SER OI of [REDACTED] cease any collection procedures for the SER OI, and reimburse Respondent for any SER OI already collected, if any.
3. Disqualify Respondent from FAP for a period of **12 months**.

AE/tm



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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
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