



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 6, 2017
MAHS Docket No.: 16-017873
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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 State Emergency Relief (SER) 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 and SER benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in 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 is [REDACTED], (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the SER OI period is [REDACTED] [REDACTED], (SER OI period).
8. During the fraud period, Respondent was issued \$ [REDACTED] in FAP and SER benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and SER benefits in the amount of \$ [REDACTED]
10. This was Respondent's first alleged IPV.
11. 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.

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 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 (January 2016), pp. 12-13; ASM 165 (August 2016), pp. 1-2.

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 of her benefits because she failed to notify the Department of her employment wages from [REDACTED] [REDACTED] (employer 1) and [REDACTED] (employer 2), which caused an OI of FAP and SER benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2015), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

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. 11.

First, the Department presented documentation showing that Respondent was aware of her responsibility to report changes as required (i.e., application and notice of case action). [Exhibit A, pp. 11-41.]

Second, the Department provided verification of Respondent's employment earnings as follows: (i) she received income from employer 1 from [REDACTED] [REDACTED] and (ii) she received income from employer 2 from [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [Exhibit A, pp. 50-55.]

Third, the Department presented a Wage Match – Details screen that shows Respondent’s employment earnings were discovered. [Exhibit A, pp. 46-49.]

Fourth, the Department presented Respondent’s SER application dated [REDACTED] [REDACTED] which was submitted during the SER alleged fraud period and just prior to the FAP fraud period. [Exhibit A, pp. 42-45.] In the application, Respondent did not report any employment income, even though the evidence established that she was receiving income from employer 1 at the time. [Exhibit A, pp. 43 and 53-55.]

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV involving her benefits when she failed to report her employment earnings. The Department presented Respondent’s SER application that was received on [REDACTED], which was submitted during the SER fraud period and just prior to the FAP fraud period. [Exhibit A, pp. 42-45.] In the application, Respondent did not report any employment income, even though the evidence established that she was receiving income from employer 1 at the time. [Exhibit A, pp. 43 and 53-55.] This evidence is sufficient to establish that Respondent intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her benefits or eligibility. As such, the Department has established that Respondent committed an IPV of FAP benefits.

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; BEM 708 (October 2016), p. 1. Clients are disqualified for ten 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

FAP Overissuance

When a client group receives more benefits than they are 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 established that Respondent received an OI of FAP benefits totaling \$ [REDACTED] for the period of [REDACTED]. [Exhibit A, pp. 57-67.]

State Emergency Relief - Overissuance

In this case, the Department indicated that Respondent received emergency assistance with SER payments totaling \$ [REDACTED] during the SER OI period. [Exhibit A, p. 3.]

For SER only, BAM 720 states that suspected IPV's can be combined with FIP, SDA, CDC and FAP programs to meet the OIG referral threshold of \$ [REDACTED] BAM 720, p. 6. The Recoupment Specialist (RS) follows the procedures in the SER manual for recoupment of SER. BAM 720, p. 4.

A SER overpayment is an amount of assistance issued that the SER 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. SER overpayments are recouped only by requesting the SER group to repay the amount overpaid in cash (cash recoupment). ERM 404, p. 1.

The Department presented Respondent's benefit summary inquiry, which showed that Respondent received emergency assistance with SER payments for electricity and heat totaling \$ [REDACTED] during the SER OI period. [Exhibit A, p. 68.] The Department argued that if she had reported her income properly, she would not have been eligible for the heat and electricity assistance.

There are no income copayments for SER energy services. ERM 208 (October 2014), p. 1. With respect to income, clients are either eligible or they are not. ERM 208, p. 1. For a group to be eligible for energy services, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the standard for SER energy/LIHEAP services for the number of group members. ERM 208, p. 1. If the income exceeds the limit, the request must be denied; see Exhibit II, SER Income Need Standards for Energy Services. ERM 208, p. 1. Exhibit II, SER Income Need Standards for Energy Services, states that income limit for a family size of two is \$ [REDACTED] ERM 208, p. 6.

The Department indicated that the group's total income was \$ [REDACTED] which, therefore, exceeded the income limit of \$ [REDACTED] for a group size of two. [Exhibit A, p. 69.] This income consisted of \$ [REDACTED] from Respondent's income from employer 1 and \$ [REDACTED] in Supplemental Security Income (SSI) from the other group member. [Exhibit A, pp. 55, 58, and 69.] However, the calculation of the income does not end here because policy states that it is the *net* income, not the gross income, that must exceed the income limits. See ERM 208, pp. 1 and 6.

ERM 206 provides further guidance to establish the SER countable income period and determines the SER group's net countable income based on the application date and

entry of income information in the data collection screens. ERM 206 (October 2013), p. 1. The SER budget computation period is 30 days. ERM 206, p. 1. This is referred to as the countable income period. ERM 206, p. 1. Verify and budget all non-excluded gross income the SER group expects to receive during the countable income period. ERM 206, p. 1. Do not prorate income. ERM 206, p. 1. This policy section means that Department will take into consideration both Respondent and other group member's income.

First, Respondent's gross earned income was \$ [REDACTED] for the countable income period. [Exhibit A, p. 55.] Policy, though, states that the Department applies a mandatory withholding taxes (25 percent of the gross) from employment income, which results in a net countable income for Respondent to be \$ [REDACTED] (\$ [REDACTED] gross income minus \$ [REDACTED] mandatory tax deduction). [ERM 206, p. 5.] Second, the Department also uses the net amount received for SSI income, which appears to be the \$ [REDACTED] for the group member. ERM 206, p. 1.

Now, when both amounts are added together, the resulting net countable income is \$ [REDACTED] (\$ [REDACTED] Respondent's earned income plus \$ [REDACTED] of the group member's unearned income.) [Exhibit A, pp. 13-14.] The net countable income is *below* the SER income need standard of \$ [REDACTED] for a group size of two, which appears to show that Respondent would be income eligible for the SER assistance for heat and electricity. The Department's mistake in this case was that it looked at the gross income, but the policy specifically states that it must use the net income. See ERM 208, pp. 1 and 6. As such, the Department failed to satisfy its burden of showing that Respondent received any SER overpayment during the OI period.

Additionally, the undersigned conducted the above calculations without any budget provided by the Department (i.e., similarly to the FAP budgets provided for the evidence record). Thus, this is an additional reason why the Department failed to establish an SER OI. As such, the SER OI period is subtracted from the total OI sought; and the Department is only entitled to the FAP OI in this case.

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:

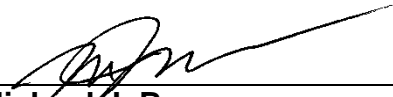
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$ [REDACTED]
3. Respondent **did not** receive an OI of SER program benefits in the amount of \$ [REDACTED]

The Department is **ORDERED** to delete the SER OI and cease any SER recoupment action.

The Department is **ORDERED** to reduce the OI to \$ [REDACTED] for the FAP period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period **12 months**.

EjF for MJB/jaf



Michael J. Bennane
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]
[REDACTED]