



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]
[REDACTED]

Date Mailed: June 16, 2017
MAHS Docket No.: 16-018198
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 three-way 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 herself.

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 that would affect her benefits within 10 days.
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 \$ [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 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 by failing to report to the Department that she was incarcerated. The evidence established that Respondent was incarcerated and also that she failed to advise the Department that she was incarcerated, and thus, was not eligible for FAP benefits. BEM 265 provides:

Residents of institutions can qualify for certain program benefits in limited circumstances. This item explains how institutional status affects eligibility.

- **Public nonmedical institution** means a government-operated facility that does not provide medical care (e.g. jail or prison, juvenile detention or secure short-term detention). A community residence facility for fewer than 17 people or a school is not considered a public nonmedical institution.

FAP Only

A person in a facility which provides its residents a majority of their meals can qualify for FAP **if** the facility:

- Is authorized by the Food and Nutrition Service (FNS) to accept Food Assistance; **or**
- Is an eligible group living facility as defined in Bridges Eligibility Manual (BEM) 615.

The resident must also meet the criteria in the ELIGIBLE PERSONS section in BEM 617. BEM 265 (July 2015), pp. 1-2.

As can be seen, the Respondent's incarceration made her ineligible for FAP benefits as she was incarcerated in the [REDACTED] County Jail and was not in a non-profit institution as required by BEM 617.

In addition, the Department established that the Respondent was aware of her responsibility to report changes in circumstance based on an application for assistance on [REDACTED], prior to her incarceration. The Department presented evidence that the Respondent was incarcerated based upon information provided by the IP analyst through Data Exchange Gateway. The information established that the Respondent was booked on [REDACTED], and released [REDACTED]. The Respondent did not dispute the dates of her incarceration.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (October 2016) p. 12.

Changes may be reported in person, mail or telephone.

In this case, the Respondent did credibly testify that she did not allow anyone to use her card and that she believed her mother used the card while she was incarcerated without her permission. The Respondent further testified that her mother had a [REDACTED]

membership, and the EBT purchase history confirmed some of the purchases were made there. The Respondent said she had given her pin number to her mother when she required assistance with shopping when she suffered a broken leg and was in a wheelchair. Based on these facts the Department has not demonstrated by clear and convincing evidence that the Respondent committed an IPV as the Respondent did not intentionally intend to receive more FAP benefits than she was entitled.

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 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, as discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than he or she is 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; BAM 700, p. 1.

In this case, the OI was due to client error because the client Respondent failed to report the information to the Department that she was incarcerated. BAM 700, p. 6.

In this case the Department seeks an OI for the entire time the Respondent was incarcerated, [REDACTED]; however, based upon BAM 720, the Department is not entitled to benefits for the entire period as Department must allow Respondents 10 days to report. In calculating OI, the Department must comply with the following when processing changes:

Begin Date

FIP, SDA, CDC and FAP

The overissuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the overissuance period (for overissuances 11/97 or later) Bridges allows time for:

- The 10-day client-reporting period, per BAM 105.
- The full standard of promptness (SOP) for 10-day change processing, per BAM 220.
- The full 12-day negative action suspense period.

Note: For FAP simplified reporting, the household has until the 10th of the following month to report the change timely; see BAM 200.

End Date

FIP, SDA, CDC and FAP

The overissuance period ends the month (or pay period for CDC) before the benefit is corrected.

Applying the above referenced policy required periods (10/10/12), the OI should begin [REDACTED]. The begin date used by the Department was [REDACTED]; and thus, the OI must be reduced to cover only the period [REDACTED]. The Department initially sought an OI of \$ [REDACTED]. The Respondent received \$ [REDACTED] for [REDACTED]; and thus, the OI is reduced to \$ [REDACTED] ($\$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED]$) [See Exhibit A, p. 20.]

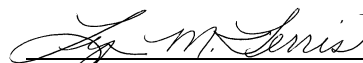
DECISION AND ORDER

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period [REDACTED] [REDACTED] [REDACTED] [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.

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]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]