



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 13, 2017
MAHS Docket No.: 16-018382
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 22, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], 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) and Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and FIP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and FIP benefits that the Department is entitled to recoup?

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 December 14, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. Respondent was a recipient of FAP and FIP benefits issued by the Department.
3. Respondent was aware of the responsibility to report income.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the FAP fraud period (FAP fraud period) is August 1, 2015 to October 31, 2015.
6. The Department alleges that during the FAP fraud period Respondent was issued [REDACTED] FAP benefits by the State of Michigan but was entitled to [REDACTED] in such benefits during this time period.
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
8. The Department's OIG indicates that the time period it is considering the FIP fraud period (FIP fraud period) is September 1, 2015 to November 30, 2015.
9. The Department alleges that during the FIP fraud period Respondent was issued [REDACTED] in FIP benefits by the State of Michigan but 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 first alleged FAP IPV and first alleged FIP IPV.
12. 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 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 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 his or his reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or his 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 and FIP benefits because she intentionally withheld information concerning her employment income in order to receive or maintain benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP and FIP eligibility and amount. BEM 556 (July 2013), pp. 2-6; BEM 518 (October 2015), p. 3. FAP recipients who are not simplified reporters and FIP recipients 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 (April 2015), pp. 11-12.

In support of its IPV case against Respondent, the Department presented (i) applications Respondent submitted to the Department on November 8, 2014 and March 24, 2015; (ii) a redetermination Respondent submitted to the Department on October 26, 2015; (iii) a printout from the ██████████, a Department-accessible database where employers voluntarily report employee employment information, concerning Respondent's employment with ██████████ (Employer); (iv) an affidavit Respondent submitted to the Department in connection with its fraud investigation in which Respondent asserted that she had notified the ██████████ program and the Department's local office on more than one occasion that she was employed; (v) notes from the ██████████ program showing that Respondent reported to her worker on June 11, 2015 that she was hired by Employer and that the worker verified employment with Employer's Human Resources on June 22, 2015; (vi) benefit summary inquiries showing the FAP and FIP benefits Respondent received during the fraud period for each program; (vii) FAP OI budgets for each month during the FAP 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; and (viii) FIP OI budgets for each month during the FIP fraud period showing the calculation of FIP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in the determining her FIP eligibility and allotment at the time of issuance.

At the hearing, Respondent testified that she informed both the local office on multiple occasions and her ██████████ worker that she had begun employment. Notes from the ██████████ worker support Respondent's testimony that she timely reported her

employment. Respondent again reported her employment to the Department in the redetermination she submitted to the Department on October 26, 2015 (Exhibit A, p. 103). The Department conceded that it became aware of Respondent's employment because she reported it, although it contends that she reported it untimely in the redetermination. However, Respondent's credible testimony, as well as the documentation presented, particularly the [REDACTED] documents, support Respondent's position that she timely reported her employment income to the Department.

Under the evidence presented, the Department failed to establish by clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of her FAP and FIP benefits. As such, the Department has not established that Respondent committed an IPV concerning either her FAP or FIP cases.

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 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 or FIP benefits.

Overissuance

In this case, the Department alleges that, because Respondent failed to timely report her employment income, she received FAP and FIP benefits she was ineligible to receive. 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 a FAP or FIP 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.

FAP OI

In this case, the Department alleges that Respondent received FAP benefits totaling [REDACTED] during the FAP fraud period but was eligible for only [REDACTED] in FAP benefits during this period once her income from Employer is budgeted, resulting in Respondent being overissued [REDACTED] in FAP benefits during the FAP fraud period. The benefit summary inquiry establishes that Respondent was issued [REDACTED] in FAP benefits during the FAP fraud period.

The Department properly considered the 10-day reporting period from Respondent's receipt of the first payment from employment on June 25, 2015, the 10-day processing period and the 12-day negative action period when determining to begin budgeting Respondent's employment income in August 2015. BAM 105, p. 7; BAM 720, p. 7. To establish the OI amount, the Department presented FAP OI budgets for each month during the FAP fraud period showing the FAP benefits Respondent was eligible to receive if the budgets had taken into consideration her employment income.

In each FAP OI budget, the Department concluded that, when Respondent's employment income is considered in the calculation of her FAP eligibility and allotment, her net income made her eligible for █████ in FAP benefits for August 2015 and █████ in FAP benefits for September 2015 and October 2015. In calculating a client's net income, the Department reduces the client's gross earned and unearned income by specified deductions, including the earned income deduction, which is equal to 20% of the household's earned income. BEM 556 (July 2013), pp. 1-5; BEM 554 (October 2015), p. 1. The earned income deduction is not available for client error overissuances due, at least in part, to failure to report earnings. BAM 720, p. 10.

In this case, each of the FAP OI budgets excludes the earned income deduction in calculating Respondent's net income. However, as discussed above, the evidence supports Respondent's testimony that she timely reported her employment. Therefore, Respondent **is** eligible for the earned income deduction in the calculation of her FAP net income. Because none of the budgets take the earned income deduction into consideration, the Department has failed to satisfy its burden of showing that Respondent was overissued █████ in FAP benefits during the FAP fraud period.

Thus, the Department is **not** entitled to recoup and/or collect from Respondent █████ in FAP benefits issued to Respondent during the FAP fraud period.

FIP OI

The Department also alleges that, due to her employment income, Respondent was ineligible for any FIP benefits issued to her during the FIP fraud period. In order for a FIP recipient to continue to be eligible for FIP benefits, the individual must establish "financial need." BEM 518 (July 2013 and October 2015), p. 1. Financial need for an ongoing FIP recipient is established when an issuance deficit test shows that the certified group's payment standard exceeds the individual's budgetable income by at least █████. BEM 518, pp. 1, 3. In this case, Respondent was receiving FIP benefits for a three-person FIP group, and therefore the applicable payment standard was █████ RFT 210 (December 2013), p. 1.

In determining Respondent's budgetable income at the time she received her employment income, the Department was required to deduct █████ from her countable earnings and then deduct an additional 50% of her countable earnings. BEM 518, p. 5. Additionally, the Department would be required to exclude any child support income it retained but include any voluntary or direct support paid to the client in determining ongoing FIP eligibility. BEM 518, pp. 5-6.

The Department presented FIP OI budgets for each month during the fraud period it alleged showed the amount of FIP benefits Respondent was eligible to receive if her earned income had been properly budgeted in determining her budgetable income for FIP eligibility and allotment purposes (Exhibit A, pp. 84-90). A review of the budgets shows that the Department properly considered Respondent's actual monthly income for September 2015, as shown in the Work Number report, and slightly under-calculated her income for October 2015. The November 2015 FIP OI budget, however, is based on ██████ in pay the Department alleges Respondent received from Employer that month but does not correspond to any evidence presented, either from the Work Number or the consolidated inquiry showing quarterly wages Respondent received from Employer. Because the Department failed to establish the basis for the income for the November FIP OI budget, it cannot establish any FIP OI for November 2015.

With respect to the FIP OI for September 2015 and October 2015, the FIP OI budgets for those months show that, in determining Respondent's budgetable income, the Department properly reduced Respondent's monthly income, as calculated, by the \$█████ disregard and then the ██████ disregard. Because Respondent's budgetable income for September 2015 and October 2015 exceeded the ██████ certified group payment standard, Respondent was ineligible for FIP benefits those months. Although she was not eligible for any FIP benefits those months, she received ██████ in FIP benefits each month. Therefore, she was overissued ██████ in FIP benefits.

Thus, the Department is entitled to recoup and/or collect from Respondent ██████ in overissued FIP benefits during the FIP 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 not** established by clear and convincing evidence that Respondent committed an IPV of FAP and FIP.
2. Respondent **did not** receive a FAP OI of ██████ for August 1, 2015 to October 31, 2015.
3. Respondent **did** receive a FIP OI in the amount of ██████ for September 1, 2015 to November 30, 2015.

The Department is ORDERED to do the following:

1. With respect to the alleged FAP OI:
 - a. Delete the FAP OI;
 - b. Cease any and all recoupment and/or collection procedures for a FAP OI in the amount of [REDACTED], and
 - c. Supplement Respondent for any amounts already recouped and/or collected; and

2. With respect to the FIP OI:
 - a. Reduce the FIP OI to [REDACTED] and
 - b. Initiate recoupment and/or collection procedures in accordance with Department policy for a FIP OI in the amount of [REDACTED], less any amounts already recouped and/or collected.

ACE/tlf



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

Via Email:

[Redacted]

[Redacted]

[Redacted]