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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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Date Mailed: June 9, 2017
MAHS Docket No.: 16-019168
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 ██████████, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). The Respondent was present for the hearing and represented 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 ██████████, 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 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 \$ [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 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.

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 Retirement, Survivors, and Disability Insurance (RSDI) income (unearned income), which caused an overissuance of FAP benefits.

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

Income reporting requirements are limited to the following:

- Unearned income:
 - Starting or stopping a source of unearned income.
 - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 11.

First, the Department presented Respondent's online application dated [REDACTED] to show that the Respondent was aware of her responsibility to report changes as required. [Exhibit A, pp. 10-22.]

Second, the Department presented a State Online Query (SOLQ), which showed that she began receiving RSDI benefits effective [REDACTED]. [Exhibit A, pp. 29-30, and see BAM 801 (July 2015), pp. 1-4, (SOLQ reports point in time information on RSDI, Medicare, and Supplemental Security Income (SSI)).]

Third, the Department presented Respondent's Redetermination received on [REDACTED], which was during the alleged fraud period. [Exhibit A, pp. 23-28.] In the Redetermination, Respondent did not report any income, even though she was receiving unearned income at the time. [Exhibit A, p. 26.]

Fourth, the OIG Investigation Report (OIG report) indicated that the agent spoke to Respondent in-person on [REDACTED], and the following was documented from the interview: (i) she stated that she called her caseworker to report her unearned income two different times; (ii) she received a call back from her caseworker stating that she was no longer her worker, and another one would call her back; (iii) she never received a call back, and thought that since she had told her old worker it would get to the new one; and (iv) she might have been confused when asked on the Redetermination in [REDACTED] about her income and thought it was meaning her income for a job. [Exhibit A, p. 3.]

At the hearing, Respondent testified and/or asserted the following: (i) she did not intend commit an IPV of her FAP benefits; (ii) she stated that she began receiving RSDI in [REDACTED]; (iii) in late [REDACTED] or early [REDACTED], she left two voicemails for

her caseworker in order to inform the caseworker about her unearned income and four days later, her caseworker called back telling her she had a new caseworker and that she would receive a call from that person, but she never did; (iv) there was no further contact with her caseworker after that point and she assumed the Department's system received information about her unearned income; and (v) she indicated no income in the Redetermination received in [REDACTED] because she thought the Department's system already knew of her income and she also thought the question meant did she have income from a job, not Social Security benefits.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department's position is that Respondent committed an IPV of her FAP benefits by failing to report her unearned income. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that she did not intend to commit a violation of the FAP program. The undersigned finds Respondent's testimony credible that she attempted to contact her caseworker to inform the caseworker about her unearned income, but to no avail; she did not intend to commit an IPV of her FAP benefits; and she misunderstood the income related question on the Redetermination. As such, Respondent's testimony credibly established that she did not intentionally withhold her unearned income information from the Department. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the unearned income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish 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 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. 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated above, there was no IPV committed in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the Department. BAM 715 (January 2016), p. 1.

A client error is present in this situation because Respondent failed to timely notify the Department of her unearned income. Respondent testified that she attempted to notify her caseworker of her unearned income in late [REDACTED] or [REDACTED]. The Department presented credible evidence showing that she began receiving unearned income effective [REDACTED], despite her claim that it began [REDACTED]. [Exhibit A, pp. 29-30.] She failed to present any evidence showing that her unearned income began in [REDACTED]. Policy states that changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10. The evidence established that she failed to report her income changes within 10-days because she began receiving the unearned income in [REDACTED], but her testimony revealed she did not report it until late [REDACTED] or early [REDACTED] which, therefore, means she failed to timely notify the Department of her unearned income. Thus, an OI is present in this case.

Applying the overissuance period standard, it is found that the Department applied the appropriate OI begin date of [REDACTED]. [See BAM 715, pp. 4-5 and Exhibit A, pp. 3 and 29-30.]

Additionally, 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 715, p. 6.

In this case, the Department presented OI budgets for [REDACTED]. [Exhibit A, pp. 31-67.] The budgets included Respondent's unearned income that was not previously budgeted. A review of the OI budgets found them to be fair and correct. See BAM 715, p. 8. Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued from [REDACTED].


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 FAP program 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, less any amount already recouped and/or collected.

EJF/jaf



Eric J. Feldman
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]