



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 7, 2017
MAHS Docket No.: 17-000709
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 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) 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 correctly report those individuals living in her home and mandatory FAP group members.
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 seeks an IPV due to its allegation that the Respondent's spouse was living with Respondent during the period she was receiving FAP benefits and did not report him living in the household. During the time period under consideration, [REDACTED], the Respondent and her spouse were married. In support of its case, the Department presented the following evidence. The Respondent's spouse, [REDACTED], has maintained the address [REDACTED], as his residence since [REDACTED]. Exhibit A, p. 103. The spouse also has a voter registration at that address, a State of Michigan Driver's License at that address and his employer has the Respondent's address as his address at all times of his employment. See Exhibit A, pp. 61, 90, and 94. In addition, the leasing verification from Independence [REDACTED] where the Respondent resides indicates that he lives at the location. Exhibit A, pp. 101 and 103. The Respondent is still married to her spouse, and she and her children also receive health insurance coverage from her spouse. The Respondent also receives child support from her spouse. Exhibit A, p. 52.

When the Respondent applied for FAP benefits in [REDACTED] the Respondent indicated that there were three group members: herself and her two children. Exhibit A, p. 20. She listed her husband, [REDACTED], as an absent parent since [REDACTED].

In a separate note (additional Information) contained in the application, the Respondent indicated that she and her spouse were separated and that he paid the lot rent for their home through the Chapter 13, bankruptcy.

A LexisNexis search also listed [REDACTED] at the Respondent's address as of [REDACTED]. Exhibit A, pp. 66, 69. His last voter registration is also at Respondent's address. Exhibit A, p. 75. His motor vehicle is also listed to that address and registered at that address in [REDACTED]. Exhibit A, p. 90.

Department policy requires that a parent living in the household and a spouse are mandatory group members:

Spouses who are legally married and live together **must** be in the same group.

Parents and their children under 22 years of age who live together must be in the same group.

Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. (BEM) 212 (October 1, 2015), pp. 1-13.

Finally, based upon an interview with the Respondent, the Investigating OIG Agent credibly testified that the Respondent continued to maintain she did not know where her husband lived and admitted he had stayed at the home on [REDACTED], because the roads were bad for travel.

Based upon the evidence presented, it is determined that the Department has demonstrated by clear and convincing evidence that the Respondent committed an IPV when she failed to list her spouse as living with her at the time of the application and the subsequent redetermination.

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. 16. 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. 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, the Department has demonstrated by clear and convincing evidence that an IPV was established and thus is entitled to a finding of disqualification of Respondent from receiving 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. 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 gave incorrect or incomplete information to the Department. BAM 700, p. 6.

In this case, the Department presented OI budgets for the periods in question, [REDACTED], identified as the fraud period. The Department seeks an OI of \$ [REDACTED] due to the Respondent's failure to report that her husband was living in her home; and thus, his income from employment with his employer, [REDACTED] was not included as part of household income when FAP benefits were issued. The FAP OI budgets were examined at the hearing and were determined to be correct. Exhibit A, pp. 150-223. The budgets included Respondent's spouse's income from employment that was not previously budgeted because it was not reported by the Respondent and is based upon a wage information received from the Respondent's husband's employer. In addition, the Department provided a benefit usage summary which established that Respondent received FAP benefits during the period in question. Exhibit A, pp. 150-152. Thus, the Department has established that it is entitled to recoup \$ [REDACTED] for the period [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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP 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.

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

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]

DHHS

[REDACTED]

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