



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 27, 2017
MAHS Docket No.: 17-000779
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 [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 accurately report group composition.
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 second alleged IPV.
10. A Notice of Hearing was mailed on [REDACTED], 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 (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 FAP benefits because she misrepresented her group composition. Specifically, on [REDACTED] Respondent applied for FAP benefits and listed that Child A (date of birth: [REDACTED] and Child B (date of birth [REDACTED]), were residing in her home. [Exhibit A, pp. 9 and 14-15.] However, the Department presented credible evidence showing the children were actually residing with their mother and were not in Respondent's care during the alleged fraud period. The Department presented an e-mail from a Children's Protective Services (CPS) worker dated [REDACTED], in which the CPS worker indicated the children actually resided with the mother. [Exhibit A, pp. 30-31.] Another e-mail from the CPS worker dated [REDACTED], stated that according to the mother, the only time her children were living with Respondent was when the mother was living with the Respondent along with the children from [REDACTED] to the middle of [REDACTED] or a little longer. [Exhibit A, p. 30.]

Other changes must be reported within 10 days after the client is aware of them. BAM 105 (July 2015), p. 11. These include, but are not limited to, changes in persons in the home. BAM 105, p. 1. FAP group composition is established by determining all of the following: (i) who lives together; (ii) the relationship(s) of the people who live together; (iii) whether the people living together purchase and prepare food together or separately; and (iv) whether the person(s) resides in an eligible living situation. BEM 212 (October 2015), p. 1. Parents and their children under [REDACTED] years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits.

First, the evidence established that Child A and Child B did not reside with Respondent during the fraud period. [Exhibit A, pp. 30-31.]

Second, the Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented her household composition during the fraud period. In the present case, Respondent reported that Child A and Child B were members of the household in her application dated [REDACTED], even though the evidence established that Child A and Child B were not members of the household at the time. [Exhibit A, pp. 9, 14, 15, and 30-31.] This is persuasive evidence that Respondent committed an IPV of her FAP benefits because she misrepresented her group composition for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits. In summary, there was clear and convincing

evidence that Respondent was aware of the responsibility to report that Child A and Child B were not members of the household and that she intentionally withheld or misrepresented this information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility. See BAM 105, p. 11 and BEM 212, p. 1.

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 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.

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.

As stated previously, the Department has established that Respondent committed an IPV of her FAP benefits. Moreover, it is found that the Department applied the appropriate OI begin date of [REDACTED]. [BAM 720, p. 7 and Exhibit A, pp. 9-31.]

In this case, the Department presented OI budgets from [REDACTED]. [Exhibit A, pp. 32-76.] A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued for [REDACTED].

It should be noted that Respondent's OI amount included Administrative Recoupment (AR) in its calculations. [Exhibit A, p. 77.] In regards to the OI calculation of FAP benefits, the amount of Electronic Benefit Transfer (EBT) benefits received in the calculation is the gross (before AR deductions) amount issued for the benefit month. See BAM 720, p. 9 and BAM 725 (January 2017), p. 1. Thus, the Department properly included the gross amount of FAP benefits received before AR deductions in the OI calculation. See BAM 720, p. 9 and BAM 725, p. 1.

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]

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.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period of **24 months**.

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]
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