



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 28, 2017
MAHS Docket No.: 17-000786
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 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 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.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2013), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1. Note, changes known to the Department must be acted on even though the client is required to report only if the group's total gross income exceeds the SR income limit for their group size. BAM 200, p. 1. SR does not change reporting requirements for any other program. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 2. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 2.

Respondent's applicable group size in this case is six. RFT 250 indicates that the simplified reporting income limit for a group size of six is \$ [REDACTED] RFT 250 (October 2015), p. 1.

The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 5.

In this case, the Department alleges that Respondent who is a food assistance simplified reporter, committed an IPV of her FAP benefits because she under-reported group member, [REDACTED], earnings from "[REDACTED]" (earned income), which caused an OI of FAP benefits.

First, the Department presented Respondent's Redetermination received on [REDACTED] [REDACTED] to show that she acknowledged her responsibility to report all changes as required. [Exhibit A, pp. 12-17.]

Second, the Department presented a "Message for Case Worker" received on [REDACTED], in which Respondent contacted the Department to add her baby and the father/group member, [REDACTED], to her public assistance case. [Exhibit A, pp. 10 and 18.]

Third, the Department testified that Respondent was required to provide income information regarding the group member's earned income. [Exhibit A, p. 1.] On [REDACTED], Respondent submitted two of the group members' paystubs dated [REDACTED], and [REDACTED]. [Exhibit A, pp. 1, 10, and 19-20.] The Department testified that Respondent's eligibility was calculated using this information provided. [Exhibit A, pp. 1, 10, and 19-20.] On [REDACTED], the Department sent Respondent a Notice of Case Action, which notified her of the ongoing obligation to report to the Department if her household's monthly gross income exceeded the simplified reporting limit of \$ [REDACTED] (group size of six). [Exhibit A, pp. 21-25.] However, the Department then received a wage match alerting it of the group member's under-reported earnings. [Exhibit A, pp. 1, 10, and 26-27.] The Department testified that the income verification finds Respondent withheld information regarding the group member's [REDACTED], paycheck which was significantly higher. [Exhibit A, pp. 1, 10, and 28-35.] Specifically, the group member's gross income for the [REDACTED] paystub was \$ [REDACTED] and for [REDACTED], it was \$ [REDACTED] but it then escalated to \$ [REDACTED] for the [REDACTED], paystub. [Exhibit A, p. 29.] The Department basically argues that Respondent misrepresented the group member's earnings by under-reporting his income and by withholding this paycheck information, Respondent received benefits she would have otherwise been ineligible for. [Exhibit A, pp. 1, 10, and 26-27.]

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The evidence established that Respondent misrepresented the group member's income by under-reporting his income. Specifically, on [REDACTED], she submitted two of the group members paychecks dated [REDACTED], and [REDACTED]. [Exhibit A, pp. 1, 10, and 19-20.] However, at the time she submitted the paystubs, the evidence is persuasive to show that she would have also had the group members paystub dated [REDACTED], which was significantly higher than the ones she submitted. [Exhibit A, p. 29.] Based on this information, the evidence is persuasive to show that she withheld this paycheck information from the Department for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility. If she had reported this paycheck information, she would have been over the SR limits. [Exhibit A, p. 32.]

Additionally, on [REDACTED], the Department sent Respondent a Notice of Case Action, which notified her of the ongoing obligation to report to the Department if her household's monthly gross income exceeded the simplified reporting limit of \$ [REDACTED] (group size of six). [Exhibit A, pp. 21-25.] Respondent was put on notice to report if the income had exceeded any limits, which she had failed to do so in this case. The Department presented a chart showing the months the income had exceeded the simplified reporting limits and there was no evidence showing that she had properly reported to the Department that the income had exceeded the limits in accordance with Department policy.

In summary, there is persuasive evidence that Respondent committed an IPV of her FAP benefits because she intentionally withheld or misrepresented the income

information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

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 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. 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.

In this case, the Department determined that the OI period began on [REDACTED] [REDACTED] [Exhibit A, p. 4.] However, the undersigned finds that OI period begin date should be [REDACTED].

The only client error overissuances related to SR that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 5. For failure to report income over the limit, the first month of the OI is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6. Groups report if their actual income for a month exceeds 130 percent of poverty level. BAM 200, p. 6 and see also BAM 720, p. 7, (For FAP simplified reporting, the household has until the 10th of the following month to report the change timely (see BAM 200)).

BAM 715 further states if the income falls below the income limit any time during these two months and does not exceed the income limit again during the certification period, recoupment is not necessary. BAM 715 (January 2016), p. 5. *If it does exceed the income limit again during the certification period and the client does not report, all months that exceeded the limit after the first two months would be recouped.* BAM 715, p. 5, (emphasis added).

The undersigned emphasizes the portion above from BAM 715 because this is applicable in this case. For SR cases, policy generally states that Respondent has to have two consecutive months of being over the income limit, in order to begin the OI period. See BAM 200, pp. 5-6; BAM 715, p. 5; and BAM 720, p. 7. The evidence established that the first two months she was over the SR limits was [REDACTED] and [REDACTED]. [Exhibit A, p 32.] Then, the above policy the undersigned italicized would come into play. Respondent's income did exceed the income limit again during the certification period of [REDACTED], which were the months of [REDACTED]. [Exhibit A, pp. 33-39.] Therefore, policy allows the Department to recoup the amounts she was overissued for [REDACTED]. See BAM 200, pp. 5-6; BAM 715, p. 5; and BAM 720, p. 7.

In establishing the OI, the Department presented OI budgets for [REDACTED] [REDACTED] [Exhibit A, pp. 33-39.] A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits for the period of [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 program benefits in the amount of \$ [REDACTED]

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

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period of **12 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]
[REDACTED]