



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 9, 2017
MAHS Docket No.: 17-000846
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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). The Respondent was represented herself.

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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP 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 [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 all changes in circumstances within 10 days.
5. Respondent's living-together partner (LTP), and father of her child, was employed and his earned income was not reported to the Department.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
8. 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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. This was Respondent's first alleged IPV.
11. 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), p. 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 (January 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 benefits because she intentionally withheld information concerning her LTP's employment income in order to receive or maintain FAP benefits from the State of Michigan. The LTP is the father of Respondent's minor child and lives in the household. The LTP is a member of Respondent's FAP group, and employment income received by an FAP group member over age 18 is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 2-6; BEM 501 (July 2014), p. 2; BEM 212 (July 2014), p. 1. [See Exhibit A, pp. 32-35.] Respondent was a simplified reporter (SR). [Exhibit A, p. 33.] Simplified reporting groups are required to report **only** when the group's actual gross monthly income exceeds the SR income limit for their group size. **No** other change reporting is required. BAM 200 (July 2013), p. 1. The simplified reporting limit for Respondent's FAP group was \$ [REDACTED] [Exhibit A, p. 33.]

In support of its IPV case against Respondent, the Department presented (i) applications Respondent submitted to the Department on [REDACTED], and [REDACTED], for assistance; (ii) a Redetermination submitted on [REDACTED], and a Semi-Annual Contact Report submitted on [REDACTED]; (iii) a Wage Match Client Notice completed by LTP's employer, [REDACTED] (Employer), identifying LTP's start date and his gross income by paydate; (iv) a Notice of Case Action sent to Respondent on [REDACTED], showing that she was approved for FAP benefits based on a monthly income of \$ [REDACTED] (after deductions); (v) a Benefit Summary Inquiry showing that Respondent received FAP benefits during the fraud period in question; and (vi) FAP OI budgets for each month of the fraud period showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported earned income had been included in the determining her FAP eligibility and allotment at the time of issuance.

On each application, redetermination and the semi-annual contact, Respondent indicated that her LTP was unemployed and had no income. Respondent applied for State Emergency Relief (SER) on [REDACTED], and reapplied for public assistance on [REDACTED]. Respondent repeatedly failed to indicate that a member of her FAP group, her LTP, had earned income. [Exhibit A, pp. 22, 38 and 44.]

However, the employment verifications obtained by the Department establish that the LTP was employed at the time Respondent submitted the SER application and redetermination. The LTP was employed by Employer from [REDACTED] [REDACTED] [REDACTED]. [Exhibit A, p.49.] Therefore, Respondent misinformed the Department when she asserted that the LTP had no earned income. Respondent was advised in the [REDACTED] Notice of Case Action that she was required to report

any change in household income over the amount of \$ [REDACTED] [Exhibit A, p. 33.] The amount of earned income added to the household due to the LTP's employment effected Respondent's eligibility for FAP benefits, and she was required to report that information. BAM 105 (July 2013), pp. 11-12. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Exhibit A, p. 19.]

Because Respondent did not report the LTP's employment, the Department presented clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of her FAP benefits. Under these circumstances, the Department has established that Respondent committed an IPV concerning her FAP case.

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 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. 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 established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first IPV, she is subject to a one-year disqualification from receipt of 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 an FAP 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.

In this case, the Department alleges that Respondent received FAP benefits totaling \$ [REDACTED] during the fraud period but was eligible for only \$ [REDACTED] in FAP benefits during this period once the LTP's employment income is budgeted, resulting in an FAP OI of \$ [REDACTED]

To establish the FAP OI amount, the Department presented FAP OI budgets for each month of the fraud period during which an OI was alleged. Respondent did not report the LTP's employment income. The LTP was included in Respondent's FAP group as a mandatory FAP group member since he lived in the home and was a parent to one of the children in the home. The LTP's income would be considered in the calculation of Respondent's FAP eligibility during the fraud period.

A review of the FAP OI budgets for the fraud period, [REDACTED] shows that the Department properly considered the LTP's actual income from employment for each month. The Department's FAP OI budgets show that the Department concluded that Respondent had exceeded the gross income limit for FAP eligibility for [REDACTED] and [REDACTED]. [Exhibit A, pp. 52-57.] Respondent's FAP group consisted of herself, her LTP, and her two children. For a four-person FAP group, the FAP gross income limit is \$ [REDACTED] RFT 250 (October 2014), p. 1. Once the LTP's employment income was budgeted, the household income exceeded the income limit during the fraud period.

The benefit summary inquiry shows that from [REDACTED] Respondent received \$ [REDACTED] in FAP benefits. Because she was only eligible for \$ [REDACTED] in FAP benefits during this time, she was over issued \$ [REDACTED]

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in over-issued FAP benefits for [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 program benefits in the amount of \$ [REDACTED] from the FAP program for [REDACTED].

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] less any amounts already recouped and/or collected, in accordance with Department policy.

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

DM for MJB/jaf



Michael J. Bennane
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]