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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

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 14, 2017
MAHS Docket No.: 17-001396
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 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 [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.

In this case, the Department alleges that Respondent committed an IPV of her benefits because she failed to timely notify the Department of her employment wages at [REDACTED] (earned income), which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2010), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

First, the Department presented Respondent's application dated [REDACTED], to show that the Respondent was aware of her responsibility to report changes as required. [Exhibit A, pp. 10-24.]

Second, the Department presented Respondent's Notice of Case Action and a Change Report dated [REDACTED], to show that she reported no change in circumstances, no earned income reported. [Exhibit A, pp. 9 and 25-30.] The Notice of Case Action also showed that Respondent applied for and was approved for FAP benefits from [REDACTED]. [Exhibit A, pp. 9 and 25-30.]

Third, the Department presented an affidavit from Respondent dated [REDACTED], in which she stated that she did accurately report her earned income to the Department. [Exhibit A, p. 31.]

Fourth, the Department provided documents showing that Respondent received quarterly wages for her earned income. [Exhibit A, pp. 32-34.]

Fifth, the Department presented the OIG Investigation Report (OIG report), which stated that Respondent was interviewed by the agent on [REDACTED], and the following was documented: (i) she stated she reported her earned income timely to her specialist; and (ii) she wrote a statement about it on the OIG affidavit. [Exhibit A, p. 3.]

Sixth, the Department testified that it became aware of Respondent's employment at redetermination on [REDACTED]. [Exhibit A, p. 1.]

At the hearing, Respondent argued that she did not commit an IPV of her FAP benefits. Respondent testified that she timely reported her earned income to the Department. Respondent testified that she was actually denied for benefits regarding the [REDACTED] application referenced by the Department. She testified she was laid off on or about [REDACTED]; and she was subsequently rehired in [REDACTED]. She testified that she did reapply for State Emergency Relief (SER) assistance on [REDACTED], but did not believe she applied for FAP benefits. However,

according to the Notice of Case Action dated [REDACTED], it appeared that Respondent applied for FAP benefits on [REDACTED], because she was approved for benefits. [Exhibit A, p. 27.] But the Department failed to present any evidence showing her [REDACTED] application for FAP benefits. Instead, Respondent provided a copy of her SER application signed on [REDACTED], in which she reported her earned income. [Exhibit 1, pp. 5-9.] She also provided a summary of her applications submitted in the past, referred to as "MDHHS-MI Bridges," which showed her application was processed on [REDACTED] [Exhibit 1, p. 4.] Finally, Respondent provided a copy of her [REDACTED] W-2 for her earned income and her tax return for [REDACTED] to show that the amount used to calculate her overissuance was improper. [Exhibit 1, pp. 1-3.]

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. Respondent provided credible testimony and evidence showing that she applied for SER benefits, not FAP benefits, on or about [REDACTED], despite her being approved for FAP benefits effective [REDACTED]. [Exhibit A, pp. 27-30 and Exhibit 1, pp. 5-9.] Nevertheless, the evidence and testimony presented by Respondent showed that she properly and timely informed the Department of her earned income in the SER application. [Exhibit 1, p. 7.] The Department did argue that there was no stamp-received date by the Department of the application. However, the undersigned Administrative Law Judge (ALJ) does not find this argument persuasive. Instead, the undersigned finds Respondent's testimony and evidence credible showing that she did submit this application on or about [REDACTED], and properly informed the Department of her earned income. As such, this evidence shows that Respondent did not intentionally withhold or misrepresent her earned income information because she timely reported the income to the Department. See BAM 105, p. 7.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the earned 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 previously, the Department failed to establish that Respondent committed an IPV of FAP benefits. However, the Department can still proceed with recoupment of the OI when there is client error or agency 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.

An agency error is caused by incorrect actions (including delayed or no action) by the Department staff or department processes. BAM 705 (January 2016), p. 1.

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 705, p. 6 and BAM 715, p. 6.

In the present case, the undersigned finds that there is only an agency error present in this case. As stated in the *Intentional Program Violation* section, the evidence established that Respondent timely reported her earned income to the Department when she submitted her SER application on or about [REDACTED], and was subsequently approved for FAP thereafter, despite no evidence presented showing an FAP application occurred in [REDACTED]. [Exhibit A, pp. 27-30, and Exhibit 1, pp. 5-9.] Nevertheless, this evidence shows that she timely reported her earned income to the Department. BAM 105, p. 7. As such, this error by the Department falls within the definition of agency error. See BAM 705, p. 1.

In establishing the OI, the Department presented OI budgets for the period of [REDACTED]. [Exhibit A, pp. 37 and 40-59.] A review of the OI budgets found them to be improperly calculated. The Department failed to provide Respondent with the 20 percent earned income deduction. The Department budgets the entire amount of earned and unearned countable income. BEM 550 (January 2010), p. 1. The gross countable earned income is reduced by a 20 percent earned income deduction. BEM 550, p. 1. For client error OIs due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 715, p. 8. However, for agency error OIs, the policy to exclude the 20 percent earned income deduction is not applicable. See BAM 705, pp. 1-12.

Applying the above policy, the Department would apply the 20 percent earned income because this case involved agency error, not client error. However, the undersigned found that the Department failed to apply the 20 percent earned income deduction in the OI budgets. [Exhibit A, pp. 40-59.] As such, the Department failed to establish that it

properly calculated the Respondent's OI for the FAP benefits in accordance with Department policy. See BAM 715, p. 8, and BEM 550, p. 1.

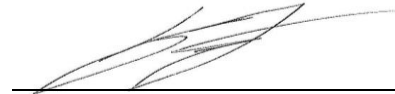
DECISION AND ORDER

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of FAP program benefits in the amount of \$ [REDACTED]

The Department is **ORDERED** to delete the OI and cease any recoupment action.

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]
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