



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: July 13, 2017
MAHS Docket No.: 16-014347
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael 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 by Administrative Law Judge Michael Bennane was held on February 22, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and testified.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Did Respondent receive an over-issuance (OI) of State Emergency Relief (SER) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On September 3, 2014, Respondent submitted an online Assistance Application (DHS-1171) for Food Assistance Program (FAP), Medical Assistance (MA) and State Emergency Relief (SER) benefits. Respondent electronically signed the

affidavit in the Assistance Application (DHS-1171) certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

2. On December 5, 2014, Respondent filed Articles of Organization for [REDACTED], with the Corporations, Securities & Commercial Licensing Bureau of the Michigan Department of Licensing and Regulatory Affairs.
3. On December 16, 2014, Respondent opened a business checking account in the name of [REDACTED]. Respondent deposited \$ [REDACTED] into the account.
4. During January 2015, Respondent deposited [REDACTED] into [REDACTED], [REDACTED].
5. On January 27, 2015, Respondent submitted an online application for State Emergency Relief (SER) benefits. On the application Respondent indicated she had no income of any type and listed only one checking account at [REDACTED].
6. On January 30, 2015, Respondent submitted a Semi-Annual Contact Report (DHS-1046) for her Food Assistance Program (FAP). On the report Respondent stated she had no income of any type.
7. During February 2015, Respondent deposited \$ [REDACTED] into [REDACTED], [REDACTED].
8. During March 2015, Respondent deposited \$ [REDACTED] into [REDACTED], [REDACTED].
9. On March 27, 2015, Respondent submitted an online application for State Emergency Relief (SER) benefits. On the application Respondent indicated she had no income of any type and listed only one checking account at [REDACTED].
10. During April 2015, Respondent deposited \$ [REDACTED] into [REDACTED] account.
11. On April 6, 2015, Respondent submitted an online application for State Emergency Relief (SER) benefits. On the application Respondent indicated she had no income of any type and listed only one checking account at [REDACTED].
12. During May 2015, Respondent deposited \$ [REDACTED] into [REDACTED], [REDACTED].

13. During June 2015, Respondent deposited \$ [REDACTED] into [REDACTED], [REDACTED].
14. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to provide true and accurate information or fulfill the reporting requirement.
15. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report the self-employment income she received from [REDACTED].
16. In accordance with Bridges Administration Manual (BAM) 720 January 1, 2015 to June 30, 2015 has correctly been determined as the over-issuance period associated with this Intentional Program Violation (IPV).
17. During the over-issuance period Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.
18. During the over-issuance period Respondent received a \$ [REDACTED] over-issuance of State Emergency Relief (SER) benefits.
19. This is Respondent's 1st Intentional Program Violation (IPV).

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

In this case, the Department presented evidence that shows Respondent was receiving self-employment income and did not report the income. Respondent testified that in her mind, she had no income from the business, so there was no intent on her part to commit any fraud. Department policy and the laws it is based on define the money Respondent received through her business as income. While Respondent has a right to her personal perspective, her liability and responsibility as an assistance recipient are defined by Department policy.

Respondent submitted several assistance applications to the Department prior to, and during, the alleged OI period. This documentation is sufficient to establish that Respondent certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

Respondent began receiving an increased amount of income during December 2014 when she began to operate [REDACTED]. Respondent did not report the increased income.

This constitutes clear and convincing evidence that Respondent was aware of the responsibility to report changes and that she intentionally failed to report the income with knowledge that doing so would reduce her benefits. Therefore, the Department has established that Respondent committed an IPV.

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

In this case, the Department submitted evidence showing that Respondent submitted fraudulent applications. Therefore any benefit periods approved as a result of the fraudulent documents are properly part of the over-issuance period.

Over-issuance Amount

Food Assistance Program (FAP) BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$ [REDACTED] of Food Assistance Program (FAP) benefits during the over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent was only eligible for \$ [REDACTED] of Food Assistance Program (FAP) benefits during the over-issuance period. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

State Emergency Relief (SER) ERM 404 Legal Base and Administrative Procedures states that an SER overpayment is an amount of assistance that the SER group was not eligible to receive. The Department submitted evidence which shows that Respondent's income made her ineligible for the \$ [REDACTED] of State Emergency Relief (SER) assistance she received in April 2015. Respondent received a \$ [REDACTED] over-issuance of State Emergency Relief (SER) benefits.

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

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, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits and a \$ [REDACTED] over-issuance of State Emergency Relief (SER) benefits which the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

There is no disqualification for a State Emergency Relief (SER) Intentional Program Violation (IPV).

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are UPHeld.



GH/nr

Michael 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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]