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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

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Date Mailed: July 21, 2017
MAHS Docket No.: 17-001809
Agency No.: ██████████
Petitioner: OIG
Respondent: ████████████████████

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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a three-way telephone hearing was held on ██████████, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Respondent was present for the hearing and represented himself.

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 ██████████, 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 United States Postal Services as undeliverable.
11. On [REDACTED], Respondent requested an Administrative Disqualification Hearing. [Exhibit A, p. 74.]
12. On [REDACTED], Respondent signed an IPV Repayment Agreement agreeing to repay the OI of \$ [REDACTED] in FAP benefits. [Exhibit A, p. 75.]

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 \$500.00 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 166 (January 2017), pp. 1-8.

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 his FAP benefits because he failed to report his return to work to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

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. 9.

First, the Department presented Respondent's online application dated [REDACTED], to show that the Respondent was aware of his responsibility to report changes as required, which includes the starting of employment and income. [Exhibit A, pp. 10 and 11-28.]

Second, the Department presented a Notice of Case Action generated on [REDACTED] [REDACTED] which informed him of his FAP benefit amount approval and showing him that his budgeted/reported income to the Department was zero; and it also reminds clients to report changes to the Department. [Exhibit A, pp. 10 and 29-34.]

Third, the Department presented Respondent's Electronic Benefit Transfer (EBT) history in order to show that he used his EBT card throughout his employment period and was aware that he was still receiving his full FAP allotment, even though he was working. [Exhibit A, pp. 10 and 35-46.]

Fourth, the Department provided Respondent's employment verification, which indicated that he was rehired on August 19, 2014, and received earnings after his rehire from [REDACTED]. [Exhibit A, pp. 47-49.] The Department argued that after submitting his online application on [REDACTED], in which he acknowledged

his reporting responsibilities, he returned back to his employment just 13 days later on [REDACTED], yet he still failed to report. [Exhibit A, p. 4.]

Fifth, on [REDACTED], the OIG Investigation Report (OIG report) indicated that Respondent contacted the OIG agent in which the following was documented: (i) he acknowledged that he failed to report his return to work and agreed to sign the Repayment Agreement; (ii) he did not think it was fair he would be disqualified from the FAP program for 12 months, even though he acknowledged that he failed to report his job as required; and (iii) he requested a hearing, but also signed a Repayment Agreement. [Exhibit A, p. 4.]

At the hearing, Respondent acknowledged that he failed to report his return to work, but that he did not intentionally withhold this information from the Department. He testified that his FAP benefits were already being deducted for the OI. He indicated that other personal issues were occurring at the time he should have reported his income.

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.

First, there was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld his earned income information. The Department presented Respondent's application and notice of case action, however, these documents were dated before the alleged fraud period. Moreover, the Department presented the Respondent's EBT history and employment verification. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld his earned income.

Second, although the evidence established that Respondent failed to report his return to work, the undersigned Administrative Law Judge (ALJ) finds that he did not intentionally commit a violation of the FAP program. The Department's position is that Respondent intentionally committed an IPV by not reporting his return to work from the Department. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). The undersigned finds Respondent's testimony credible that he failed to report his return to work, but that it did not rise to the level of an intentional act.

Accordingly, 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 his 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 ten years for a 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

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 the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (January 2016), p. 6.

During the hearing, it was discovered that Respondent signed an IPV Repayment Agreement on [REDACTED]. [Exhibit A, p. 75.] By Respondent signing the Repayment Agreement, the Department can initiate recoupment of \$ [REDACTED] for the OI period of [REDACTED]. BAM 715, p. 10. It was further discovered that the Department had already begun administratively recouping the OI. Administrative Recoupment (AR) is an automated Bridges process that reduces current Michigan Department of Health and Human Services (MDHHS) or Michigan Department of Education (MDE) benefits in order to obtain repayment on OIs for a program. BAM 725 (January 2017), p. 1. In fact, the Department presented evidence showing that it was recouping FAP benefits from an active FAP case. [Exhibit B, pp. 1-11.] As such, the undersigned will still order the Department to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy; however, less any amount that has already been recouped and/or collected. See BAM 725, pp. 1-17. Based on this information, the undersigned will not further address the OI due to the discovery of the Respondent signing the IPV Repayment Agreement. [Exhibit A, p. 75.]

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** 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.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

Respondent

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]