



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: August 14, 2017
MAHS Docket No.: 17-000791
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 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 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 or around [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 FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to accurately report his circumstances and to report changes in his circumstances to the Department, such as changes in employment and 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, the Department alleges that Respondent was issued \$[REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0 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. Postal Service 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 October 1, 2014, 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), p. 5, 12-13; ASM 165 (August 2016).

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), pp. 7-8; 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 the FAP because he failed to timely report to the Department that he gained employment and was earning income, causing an overissuance. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (December 2011), pp.7-9.

The Department contended that Respondent's failure to timely report the employment and earned income caused an OI of FAP benefits in the amount of \$ [REDACTED] from [REDACTED] ■ [REDACTED] [REDACTED]. The Department provided verification of Respondent's employment through the Work Number showing that he was hired at [REDACTED] on [REDACTED] [REDACTED], that he received his first paycheck on [REDACTED], and that he continued to be employed and earning income through the fraud period. (Exhibit A, pp. 32-35).

In support of its contention that Respondent committed an IPV, the Department presented an assistance application completed by Respondent and received by the Department on [REDACTED], a review of which shows that Respondent reported that he was employed at Aerotek and accurately reported his first pay check date of [REDACTED]. Respondent also reported unearned income for his household members on the application. The evidence showed that Respondent provided the Department with some pay stubs further verifying his employment. (Exhibit A, pp. 10-31).

After a thorough review of the evidence presented, although Respondent reported his employment more than 10 days after receiving his first payment, the Department has failed to establish that Respondent intentionally withheld this information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit an IPV.

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 a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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 failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP.

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 a 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.

At the hearing, the Department presented a FAP benefit summary inquiry to establish that the State of Michigan issued \$ [REDACTED] in FAP benefits to Respondent from [REDACTED] [REDACTED] [REDACTED] (Exhibit A, p.37). The Department contended that Respondent's failure to timely report his starting employment and income caused an OI of FAP benefits in the amount of \$ [REDACTED] as the Department alleged that Respondent's group was eligible for \$ [REDACTED] in FAP benefits during this period. (Exhibit A, p. 44).

In support of its OI case, the Department presented verification of Respondent's employment from the Work Number which detailed the amounts earned and pay dates. The Department also presented FAP OI Budgets for each month in the fraud period to show how the OI was calculated. (Exhibit A, pp. 32-35, 38-43).

Under Department policy, the calculation of the first month of the OI requires that the Department apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7. Applying this standard and in consideration of Respondent's first paycheck received on [REDACTED], the OI period begins [REDACTED], rather than [REDACTED], as the Department determined.

Thus, the Department is not entitled to recoup or collect the \$ [REDACTED] in FAP benefits issued to Respondent for [REDACTED] [REDACTED]. Upon review of the remaining budgets, when Respondent's earned income from employment is included in the calculation of the group's FAP eligibility, Respondent's group was eligible to receive \$ [REDACTED] in FAP benefits for the months of [REDACTED] and [REDACTED].

Thus, the Department is entitled to recoup or collect from Respondent \$ [REDACTED] in FAP benefits, which is the difference between the \$ [REDACTED] in FAP benefits actually issued to him and the \$0 in FAP benefits he was eligible to receive for [REDACTED] and [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 not** 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.

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



ZB/jaf

Zainab A. Baydoun
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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]