



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 1, 2017
MAHS Docket No.: 17-004962
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 ██████████, from Detroit, Michigan. The Department was represented by ██████████ ██████████ 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 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 not aware of the responsibility to report all changes in circumstances within 10 days.
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 periods to be [REDACTED], and [REDACTED] (fraud period).
7. During the fraud periods, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was only 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 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 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 (1/1/16), pp. 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 his FAP benefits because he intentionally withheld information concerning his employment income in order to receive or maintain FAP benefits from the State of Michigan. The Respondent was the sole member of his FAP group, and employment income is considered in the calculation of a client's FAP eligibility and benefit amount. BEM 556 (July 2013), pp. 2-6; BEM 501 (July 2014), p. 2; BEM 212 (July 2014), p. 1. [Exhibit A, pp. 55-60.] Respondent was provided benefits on the basis that he had no income. [Exhibit A, pp. 62, 70.] Respondent was provided a copy of the Change Report form on which he was to notify the Department about any changes in his circumstances. The forms were provided to Respondent in [REDACTED] and in [REDACTED]. [Exhibit A, pp. 67-68, 73-74.] Respondent was made aware that he was to report any changes within 10 days. [Exhibit A, pp. 46, 66, and 72.] Although Respondent became employed while receiving benefits, he failed to notify the Department of the employment and the wages he earned from the employment throughout the fraud periods.

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 Work Number Report showing Respondent worked for the employer True Blue (Employer) during the fraud periods and had earnings; (iii) the Notice of Case Action sent to Respondent on [REDACTED], and on [REDACTED], showing that he was approved for FAP benefits based on a monthly income of \$ [REDACTED] (iv) Benefit Summary Inquiry showing that Respondent received FAP benefits during the fraud periods; and (v) FAP OI budgets for each month of the fraud periods 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 his FAP eligibility and allotment at the time of issuance. [Exhibit A, pp. 55-60, 62, 70, 75-76, and 79-90.]

Therefore, Respondent misinformed and failed to inform the Department about his income on an ongoing basis. Within a week of Respondent submitting his [REDACTED] application, he returned to employment with the Employer. [Exhibit A, p. 58.] Because Respondent had earnings during the fraud periods, he was required to notify the Department of his change in circumstances. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Exhibit A, p. 39.]

Because Respondent did not report his employment or the earnings received, the Department presented clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of his FAP benefits.

Under these circumstances, the Department has established that Respondent committed an IPV concerning his 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, he 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 periods but was eligible for only \$ [REDACTED] in FAP benefits once his 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 periods during which an OI was alleged. [Exhibit A, pp. 79-90.] Respondent did not report any employment income during the fraud periods. A review of the FAP OI budgets for the fraud periods, [REDACTED], and [REDACTED], shows that the Department properly considered Respondent's actual income from employment for each month. Respondent was a single-member FAP group. After considering Respondent's income and his group size, it was determined that there was an overissuance of \$ [REDACTED] in FAP benefits.

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in over-issued FAP benefits 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** 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], and [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/jaf

Denise McNulty
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]