



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 22, 2017
MAHS Docket No.: [REDACTED] 17-004997
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 her circumstances and to report changes in her circumstances to the Department, such as changes in employment and income for herself and her group members.
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 [REDACTED] 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 second alleged IPV and the Department has requested a 24 month disqualification. (Exhibit A, p. 1-3)
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US 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 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 she failed to report to the Department: that her son had gained employment with two employers and was earning income; that her husband had gained employment and was earning income; and that she was employed and 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 ten days of receiving the first payment reflecting the change. BAM 105 (January 2015), pp.10-12.

The Department contended that Respondent's failure to timely report the employment and earned income for her son, her husband and herself caused an OI of FAP benefits in the amount of [REDACTED] from [REDACTED]. The Department provided copies of the verification of employment from both of Respondent's son's employers, as well as Respondent's verification of employment, and the verification of employment for Respondent's husband. The employment verifications show that: Respondent's son gained employment on [REDACTED] [REDACTED] [REDACTED], and began earning income from two employers on [REDACTED]; that her husband was employed and earning income from [REDACTED]; and that Respondent was employed and earning income from [REDACTED], through the end of the fraud period. (Exhibit A, pp. 40-50, 52-60, and 64-73).

In support of its contention that Respondent committed an IPV, the Department presented an assistance application completed by Respondent and submitted to the Department on [REDACTED], just a few weeks prior to the start of employment for her son. The Department further presented a Notice of Case Action dated [REDACTED] which advises Respondent that she was approved for FAP benefits based on [REDACTED] in earned income. (Exhibit A, pp. 11-39). Although Respondent and her group members had not started their employment when the application was completed, Respondent's son gained employment just a few weeks later and began receiving income. Additionally, Respondent and her husband each gained employment during the fraud period which was unreported to the Department. The unreported income was in excess of the gross income limit for the FAP based on Respondent's group size.

The Department's evidence was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, as well as the penalties for failing to do so. After further review, Respondent failed to report her employment and income and as such, the Department's evidence establishes, by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and thus committed 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 has satisfied its burden of showing that Respondent committed a FAP IPV. The Department presented an IPV sanctions summary showing that Respondent was disqualified from the FAP from [REDACTED] for a first IPV. (Exhibit A, p. 86). Therefore, because this was Respondent's second IPV, she is subject to a two-year 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] (Exhibit A, pp. 74) The Department contended that Respondent's failure to report the earned income for herself and her group members caused an OI of FAP benefits in the amount of [REDACTED], as the Department alleged that Respondent was eligible for [REDACTED] in FAP benefits during this period, due to excess gross income. (Exhibit A, p. 75).

FAP groups with no senior/disabled/veteran (SDV) member, must have gross monthly income below the applicable gross and net income limits. There was no evidence presented that Petitioner's FAP group included any SDV members, thus, the group is subject to the gross income test for FAP eligibility. BEM 550 (October 2015), pp.1-2. Effective [REDACTED], the gross income limit for a FAP group of three is [REDACTED] and for a FAP group of four, [REDACTED] RFT 250 (October 2015), p 1.

In support of its FAP OI case, the Department presented verification of employment for Respondent, her son, and her husband which detailed the amounts earned and pay dates. A review of the employment information provided and the budgets presented for each month shows that given Respondent's son's first pay dates and benefit issuance records, the Department properly determined that the first month of the first OI period would be [REDACTED], as clients have 10 days to report changes, the Department has 10 days to process the reported changes, and Department policy provides for a 12 day negative action period.

The Department presented OI budgets for each month in the fraud period showing how the OI was calculated. (Exhibit A, pp. 75-85). The benefit issuance summary indicates that Respondent's household size was four during the fraud period; however, the Department applied a household size of three on the OI budgets provided and applied a gross income limit of [REDACTED]. This discrepancy was unexplained by the Department. Upon further review, however, when Respondent and her group member's unreported 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 during the fraud period. Respondent's household's gross income for each month was in excess of the applicable gross income limit for both a group size of three ([REDACTED]) and a group size of four ([REDACTED]). Thus, the Department's error is proved to be harmless.

Therefore, 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 and the \$0 in FAP benefits she was eligible to receive.

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 of the FAP.
2. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy, less any amount already recouped/collected.

It is FURTHER ORDERED that Respondent be personally disqualified from the FAP for a period of 24 months.



Zainab A. Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

ZB/tlf

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

Via Email:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]