



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 26, 2017
MAHS Docket No.: 17-003242
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 was held on September 12, 2017, from [REDACTED] 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?

FINDINGS OF FACT

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

1. On June 4, 2010, Respondent submitted an Assistance Application (DHS-1171) for Food Assistance Program (FAP) and Family Independence Program (FIP) benefits. Respondent's household consisted of herself and her son, [REDACTED] whose date of birth was [REDACTED]. The application states that [REDACTED] received Supplemental Security Income (SSI) benefits.
2. On October 5, 2013, Petitioner was sent a Notice of Case Action (DHS-1605) which stated she was eligible for \$ [REDACTED] per month in Food Assistance Program

(FAP) benefits. The notice stated Petitioner was the only member of the Food Assistance Program (FAP) benefit group and received \$ [REDACTED] per month of unearned income.

3. On October 18, 2013, Respondent began receiving earned income from employment at Meijer's.
4. On January 21, 2014, Petitioner was sent a Notice of Case Action (DHS-1605) which stated she was eligible for \$ [REDACTED] per month in Food Assistance Program (FAP) benefits. The notice stated Petitioner was the only member of the Food Assistance Program (FAP) benefit group and received \$ [REDACTED] per month of unearned income.
5. On May 28, 2014, Petitioner submitted a Redetermination (DHS-1010). The form only listed Petitioner as being in the household and indicated that she was still receiving SSI. The form did not state any other income and did not indicate that anyone was attending school.
6. The December 2013, over-issuance budget submitted by the Department shows that Petitioner received \$ [REDACTED] of unearned income which was Unemployment Compensation benefits.
7. The January 2014, over-issuance budget submitted by the Department shows that Petitioner received \$ [REDACTED] of unearned income which was Unemployment Compensation benefits.
8. During this hearing Respondent testified credibly that her son resided with her and graduated from high school when he was 18 years old. [REDACTED] would have turned 18 on [REDACTED].
9. Evidence in this record does not convince this Administrative Law Judge that Respondent committed an Intentional Program Violation (IPV) nor that the information in the over-issuance budgets submitted is correct.

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.

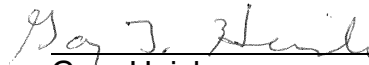
Evidence in this record does not convince this Administrative Law Judge that Respondent committed an Intentional Program Violation (IPV) nor that the information in the over-issuance budgets submitted is correct.

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 NOT established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). Neither has the Department established that Respondent received a Food Assistance Program (FAP) over-issuance.

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

GH/nr



Gary Heisler
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]