



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 13, 2017
MAHS Docket No.: 17-004960
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 August 22, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing but was represented by her husband [REDACTED]

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?
3. Did Respondent receive an over-issuance (OI) of Family Independence Program (FIP) 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 August 1, 2012, Respondent electronically signed the affidavit in an Assistance Application (DHS-1171) for Food Assistance Program (FAP) and Family Independence Program (FIP) benefits. Respondent's household consisted of herself, [REDACTED] her husband and their three children. On the application it was indicated that [REDACTED] was disabled and was waiting for a disability determination.

The application also stated that Respondent was caring for a disabled person in the home. Her signature certified notice of reporting requirements as well as recoupment liability for benefits issued.

2. During December 2012, Respondent's household received notice of their approval for Social Security Administration disability benefits. [REDACTED] called the Department case worker and left a phone message stating they would start receiving Social Security Administration disability benefits in January 2013.
3. On January 9, 2013, Respondent's household began receiving unearned income when her husband and three children all began receiving Social Security Administration benefits. The increased income was not reported.
4. The evidence in this record does not establish that Respondent committed an Intentional Program Violation (IPV). Respondent's error of not reporting again when the household began to receive the benefits, cause this over-issuance.
5. In accordance with Bridges Administration Manual (BAM) 715 March 1, 2013 to June 30, 2013 has correctly been determined as the over-issuance period associated with this Client Error over-issuance.
6. During the over-issuance period Respondent received a \$ [REDACTED] Client Error over-issuance of Food Assistance Program (FAP) benefits and a \$ [REDACTED] Client Error over-issuance of Family Independence Program (FIP) benefits.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

In this case, Respondent's spouse, [REDACTED], testified credibly that in December 2012 when they received notice of being approved for Social Security Administration disability benefits, they left a phone message for the case worker that they would begin

receiving the benefits in January 2013. Respondent's failure to follow up with another report when they began receiving the benefits is a client error, not an Intentional Program Violation (IPV). The evidence in this record does not establish an Intentional Program Violation (IPV).

OVER-ISSUANCE

Over-issuance Period

BAM 715 Client/CDC Provider Error Over-Issuances, states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period: see BAM 220.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

The error which caused this over-issuance occurred on January 9, 2013 when Respondent's household began receiving Social Security Administration disability benefits and did not report that fact to the Department a second time. Applying these requirements, the over-issuance period was properly calculated to begin March 1, 2013.

Over-issuance Amount

BAM 715 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$ [REDACTED] in Food Assistance Program (FAP) benefits during the over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent was not eligible for any Food Assistance Program (FAP) benefits during the over-issuance period. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

The Department also presented a benefit summary showing that the State of Michigan issued Respondent a total of \$ [REDACTED] of Family Independence Program (FIP) benefits during the over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent was not eligible for any Family Independence Program (FIP) benefits during the over-issuance period. Respondent received a \$ [REDACTED] over-issuance of Family Independence Program (FIP).

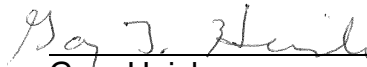
DECISION AND ORDER

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).

The evidence does show that Respondent received a \$ [REDACTED] Client Error over-issuance of Food Assistance Program (FAP) benefits and a \$ [REDACTED] Client Error over-issuance of Family Independence Program (FIP) benefits that the Department is entitled to recoup in accordance with Department policies.

It is ORDERED that the Department of Health and Human Services, will not disqualify Respondent from receiving Food Assistance Program (FAP) or Family Independence Program (FIP) benefits.

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]