



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 26, 2017
MAHS Docket No.: 17-005195
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 September 20, 2017, 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 Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Respondent receive and overissuance (OI) of State Emergency Relief (SER) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) regarding FAP?
4. Should Respondent be disqualified from receiving benefits for Food Assistance?

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 March 28, 2017, 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 food assistance Benefits issued by the Department.
4. Respondent was aware of the responsibility to report the facts as provided in a redetermination truthfully and completely.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Respondent was incarcerated for the period November 6, 2015, through August 10, 2016.
7. The Department's OIG indicates that the time period it is considering the fraud period for food assistance is December 1, 2015, through March 31, 2016, (fraud period).
8. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. The Department has also alleged an overissuance of State Emergency Relief Benefits in the amount of \$ [REDACTED] which the Respondent was not entitled to receive. The benefits were issued during the period March 30, 2016, through April 30, 2016.
11. This was Respondent's **first** alleged IPV.
12. 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).

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 (October 2017), pp. 12-13; ASM 165 (October 2016), pp. 1-2.

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 (October 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 seeks an Intentional Program Violation due to the Respondent's receipt of FAP benefits during a period while she was incarcerated and failed to report her incarceration to the Department. The evidence presented at the hearing has been reviewed, and it is determined that no IPV was established as regards Respondent. First, the Respondent had an authorized representative, Earlean Brown, throughout the period she was incarcerated and when FAP benefits were issued and used. Exhibit A, p. 14. Thus, during the period the authorized representative could have used the benefits.

In addition, the Respondent had children in the household as well who remained eligible during her incarceration. Exhibit A, p. 14. Thus, notwithstanding the Respondent was incarcerated, the children remained eligible for FAP benefits as no evidence was presented that the Department determined otherwise. In addition, the Department also relied upon a second redetermination submitted on February 23, 2016, to establish that Respondent allowed someone to use her private information to complete the redetermination so that they could use her FAP benefits. However, there was no evidence that the Respondent allowed someone to complete the redetermination on her behalf or otherwise received consideration from the person completing the redetermination so that the person could use the Electronic Benefits Transfer (EBT) card. Thus, no IPV can be established on that basis. There was no evidence that Respondent told anyone her information, and no Social Security Numbers were included on the redetermination completed while she was incarcerated. In addition, the signature on the February 23, 2016, redetermination (while incarcerated) differs from the signature on the redetermination completed while the Respondent was not incarcerated and thus, was likely submitted by someone other than the Respondent. See Exhibit A, pp. 18 and 29. Thus, the evidence does not establish an IPV.

In addition, there must be an OI in order to establish an IPV. Here, no OI can be established as the Respondent's children who remained in the household remained eligible for FAP even though the Respondent was incarcerated and no OI budgets were

submitted to determine an overissuance correctly which would exclude the Respondent as a group member. Apparently, the Department just presumed that the children were not eligible and presented no evidence to establish this presumption. Thus, based upon the foregoing, the Department has not established an IPV as regards Respondent's food assistance.

Disqualification

In this case, because the Department did not establish an IPV the Department is not entitled to a finding of disqualification due to an IPV.

State Emergency Relief (SER) Overissuance

In this case the Department seeks recoupment of an alleged SER overissuance based upon an SER application manually completed (not online) filed on March 30, 2016 while the Petitioner was still incarcerated. The SER application was completed and signed and the Department issued payments to the utilities for energy assistance SER payments at the home where Respondent formerly resided with her children prior to incarceration. See Redetermination filed March 2, 2015. Exhibit A, pp. 13-18. Department policy found in BAM 720 requires that an SER overissuance be referred only when an IPV is suspected and a FIP, SDA or FAP overissuance also exists for the same period.

Refer SER and ESS overissuances to the RS only when IPV is suspected and a FIP, SDA or FAP overissuance also exists for the same period. Follow procedures in the SER manual for recoupment of SER. Follow procedures in BEM 232 for Direct Support Services (DSS). Bam (October 2017) p. 4.

Recoupment of SER overpayments ERM 404 provides:

A SER overpayment is an amount of assistance issued that the SER group was not eligible to receive. The Department attempts to obtain repayment from the SER group of all SER overpayments. See ERM 306, Burials, for information concerning estates discovered after SER payment.

SER overpayments are recouped only by requesting the SER group to repay the amount overpaid in cash (cash recoupment). ERM 404 (March 2013), p. 13.

The Department seeks to recoup an OI it alleges that Respondent received when the Department issued SER payments for heat and electricity payments for April 20, 2016, in the amount of \$ [REDACTED] Exhibit A, pp. 25-28. At the time of the SER application, the Respondent was incarcerated. The Department submitted a Benefit Summary Inquiry which established that the SER was issued to the utilities for overdue bills. Exhibit A, p. 46. In order to do so, the Department had to determine SER group eligibility and that past payments were made on the bills.

The SER application signature on the March 30, 2016, application was not the same signature found on the redetermination dated March 2, 2015, submitted by Respondent prior to her incarceration. Exhibit A, pp. 24, 27, and Exhibit A, pp. 13-18. The Department's evidence demonstrates that the signature on both documents filed while Respondent was incarcerated are different than the one while she was not incarcerated. The signature on the SER application is the same as found on the FAP redetermination for February 26, 2016, filed when Respondent was incarcerated. The issue which must be determined is whether an OI occurred because the Respondent was incarcerated and thus, not an SER group member.

Based upon the evidence presented it is determined that the Respondent did not receive an overissuance of SER benefits because the evidence did not establish that she in fact filed the SER application and thus no overissuance can be established. The SER group did not include the Respondent because she was incarcerated and absent from the SER group for more than 90 consecutive days. ERM 201 (October 2015), p. 1. In order to be in a SER group the person must occupy the home. The facts in evidence do not establish that Respondent was in the home.

In order to establish an OI, the Department must establish that the client group got more benefits than it was entitled to receive. BAM 700. In this case, the Department cannot show that the Respondent got any benefits from the SER application as she was incarcerated and not in the home.

A single SER group consists of persons who occupy the same home. Home means the place where the members of the SER group keep their personal belongings and sleep. Respondent was not in the SER group as she had been incarcerated as of November 5, 2015, until August 10, 2016, and the SER. Application was filed on March 30, 2016; thus, an overissuance is not established for Respondent which the Department is entitled to recoup.

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 not** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.
3. Respondent **did not** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) State Emergency Relief. Food Assistance.

The Department is ORDERED to delete the overissuances for Food Assistance and State Emergency Relief and cease any recoupment action.

LMF/jaf



Lynn M. Ferris
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]