



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 5, 2017
MAHS Docket No.: 16-014743
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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 January 30, 2017, from Detroit, Michigan. The Department was represented by [REDACTED] [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?

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 August 30, 2016, 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 received FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is July 1, 2015 to November 30, 2015.
7. The Department alleges that during the fraud period Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan but was entitled to \$ [REDACTED] in such benefits during this time period.
8. This was Respondent's first alleged FAP IPV.
9. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the U.S. 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 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 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.

BAM 720 (January 2016), p. 5.

The Department clarified at the hearing that, because it was aware that Respondent had filed for bankruptcy, it was not seeking to establish an overissuance of FAP benefits but had requested the hearing only to establish an IPV and seek Respondent's disqualification from receipt of FAP program benefits. Accordingly, the issue presented is limited to whether Respondent committed a FAP IPV and is subject to disqualification.

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.

In order to establish that Respondent committed an IPV, the Department must establish by clear and convincing evidence that she 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 her FAP benefits because she intentionally misrepresented her income and failed to report her income. Employment income is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 2-6. FAP recipients who are not simplified reporters and FIP recipients are required to report (i) starting or stopping employment, (ii) changing employers, (iii) change in rate of pay, and (iv) change in work hours of more than five hours per week that is expected to continue for more than one month. BAM 105 (April 2015 and April 2016), pp. 11-12.

In support of its IPV case against Respondent, the Department presented (i) an application Respondent submitted to the Department on January 28, 2015, in which Respondent reported having no employment income; (ii) a January 29, 2015, Notice of Case Action informing Respondent that she was approved for FAP benefits based on \$█ in income; (iii) the results of a wage match, the Department's cross match with the Unemployment Insurance Agency, showing that Respondent had income during the fraud period; (iv) a printout from the Work Number, a Department-accessible database where employers voluntarily report employee employment information, concerning Respondent's employment with █ (Employer) showing that Respondent had returned to work and received a paycheck beginning May 14, 2015; (v) a Benefit Summary Inquiry showing FAP benefits issued to Respondent during the fraud period; (vi) case comments showing comments entered into the Department's computer system by Respondent's worker by date of entry; and (vii) FAP OI budgets showing Respondent's household's income if her income from Employer had been included in the calculation of the household's FAP eligibility and benefit amount.

The information from the Work Number established that Respondent had income from Employer beginning May 14, 2015. The Department testified that Respondent did not report restarting her employment, and it was discovered only through a wage match. The FAP OI budgets establish that, during the fraud period, Respondent was issued more FAP benefits than she would have been eligible to receive if her income had properly been budgeted in determining her FAP eligibility and benefit amount. The Department had notified Respondent at the time she was approved for FAP benefits in January 2015 that her benefits were based on \$█ in income. Therefore, the Department has established that (i) Respondent did not report her income, (ii) the income was uncovered by the Department, and (iii) had the income been timely reported, it would have resulted in the reduction of Respondent's FAP benefits or closure of her case.

Under these circumstances, the Department has presented clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of her FAP benefits. Therefore, the Department has established that Respondent committed an IPV concerning her 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 FAP, Family Independence Program (FIP) and State Disability Assistance

(SDA) benefits, 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/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 FAP IPV. Because this was Respondent's first IPV, she is subject to a one-year disqualification from her receipt of FAP benefits on the basis of IPV.

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 the Department **has** established by clear and convincing evidence that Respondent committed an IPV.

The Department is ORDERED to personally disqualify Respondent from FAP for a period of **12 months**.

AE for MJB/jaf



Michael J. Bennane
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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