



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 27, 2017
MAHS Docket No.: 17-002843
Agency No.: [REDACTED]
Petitioner: OIG
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 July 10, 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 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 February 21, 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 FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in her household circumstances such as changes in group composition.
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 is September 1, 2015, to April 30, 2016, (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] in such benefits during this time period. (Exhibit A, pp. 4, 37-39)
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$[REDACTED]
9. This was Respondent's first alleged IPV.
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), pp. 5, 12-13; ASM 165 (August 2016).

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.

Department policy clearly demands that to establish a FAP IPV, the Department is required to establish that there was an overissuance of benefits. See also Bridges

Policy Glossary (October 2015), p. 36 (defining IPV as “a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative”).

In this case, the Department alleges that Respondent received a FAP overissuance totaling \$ [REDACTED] for the period between September 2015 and April 2016 because she failed to report that she was married and living with her husband, [REDACTED]. The Department asserted that although she and [REDACTED] married on [REDACTED], Respondent did not report this to the Department until an intake interview conducted on June 3, 2016. The Department further maintained that during the fraud period, Respondent and [REDACTED] each had individual FAP cases and that as a combined group size of two, Respondent and [REDACTED] were eligible for less FAP benefits than what were issued to each of them individually. (Exhibit A, pp. 1, 4)

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 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.

Additionally, for FAP cases, when the overissuance involves two or more FAP groups which should have received benefits as one group, the Department is to determine the OI by adding together all benefits received by the groups that must be combined, and subtracting the correct benefits for the one combined group. BAM 720, p. 8.

At the hearing, the Department presented a benefit summary inquiry detailing the amount of benefits issued to Respondent and [REDACTED] on each of their individual FAP cases. The benefit summary inquiries show that each person was issued \$ [REDACTED] monthly, which is the maximum amount of FAP benefits for a one person group size with no income. RFT 260 (October 2014), p. 1;(Exhibit A, pp. 37-39). Based on these figures and the Department’s testimony that neither Respondent nor [REDACTED] had income, Respondent and [REDACTED] combined FAP group would be eligible for \$ [REDACTED] monthly, which is the maximum amount of FAP benefits for a two-person FAP group with no income.

However, the Department asserted that Respondent and [REDACTED] combined FAP group was actually eligible for \$ [REDACTED] monthly, resulting in an OI of \$ [REDACTED] (Exhibit A, pp. 37-39). It was unclear, and the Department remained unable to explain how it determined the OI amount of \$ [REDACTED] or the eligible monthly FAP amount of \$ [REDACTED] as there were no FAP OI budgets presented for review.

After further review and based on the evidence presented, the Department’s explanation was insufficient to establish that Respondent received a FAP OI of \$ [REDACTED] during the fraud period.

Accordingly, because the Department has failed to establish that Respondent was overissued FAP benefits in the amount of \$ [REDACTED] and because an OI is a condition of an

IPV, the Department cannot establish a FAP IPV in this case. Therefore, because there is no FAP IPV, Respondent is not subject to a disqualification from future receipt of FAP benefits. BAM 720, p. 16.

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 of the FAP.
2. Respondent **did not** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to delete the \$ [REDACTED] FAP OI and cease any recoupment and/or collection action.



ZB/jaf

Zainab A. Baydoun
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]
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