



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: December 7, 2017
MAHS Docket No.: 17-004121
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 August 28, 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 (FAP) benefits and Family Independence Program (FIP) Cash Assistance, (FIP) that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violations (IPV)?
3. Should Respondent be disqualified from receiving benefits for Food Assistance (FAP) and FIP Cash Assistance (FIP)?

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 13, 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 and FIP Cash Assistance benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report starting employment and changes.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2015 through March 31, 2016 (FAP) and December 1, 2015 through February 29, 2016 FIP Cash Assistance (fraud period).
7. 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.
8. The Department alleges that Respondent received an OI in **FAP** benefits in the amount of [REDACTED].
9. During the fraud period, Respondent was issued [REDACTED] in FIP Cash Assistance benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period. The Department credited the Respondent with [REDACTED] child support credit when calculating the FIP overissuance. The investigation report indicated the child support credit was [REDACTED] Exhibit A, p. 69. Exhibit A, p. 5
10. The Department alleges that Respondent received an OI in **FIP Cash Assistance benefits** in the amount of [REDACTED]. Exhibit A, p. 69
11. The alleged total overissuance amount for both FAP and FIP Cash Assistance benefits is \$ [REDACTED]. Exhibit A, p.5

12. This was Respondent's **first** alleged IPV for FAP and first IPV for FIP Cash Assistance.
13. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Services 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 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.

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), p. 12-13; ASM 165 (August 2016), p. 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 Respondent applied for FIP benefits on September 21, 2015. At the time of the application, the application advised Respondent that she was required to report changes within ten days, including changes in employment. Exhibit A, p. 32.

Thereafter, the Respondent received her first pay check from employment on October 30, 2015 for pay period ending October 25, 2015, which was approximately one month after beginning to receive FIP benefits. The evidence presented by the Department was that the Respondent never reported her employment with [REDACTED]. Her failure to report employment resulted in her income from employment not being included as income when calculating her FIP and FAP benefits, causing her to receive more benefits that she was entitled to.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (December 1, 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

In this case the evidence clearly demonstrated that approximately one month after completing her FIP Cash Assistance application and beginning to receive benefits. The evidence demonstrated that the Respondent began employment and at no time reported the employment and income to the Department. The Respondent continued to work through February 28, 2016. It was not until the Department discovered the employment via watch-match that it was made aware of the employment. Exhibit A, p. 50-51. The evidence completed by the employer [REDACTED], demonstrated that during the period beginning October 25, 2015, when Respondent began her employment and received her first check Respondent was employed through February 28, 2016, and received FAP benefits based upon information which Respondent originally told the Department - that she was not working, which caused her to receive benefits she was not entitled to receive based upon her income.

In this case, the Respondent failed to report her employment which began shortly after she completed an application for cash assistance. The Department's evidence established that Respondent did not report her employment which she was required to do, and began the employment within approximately one and one-half months of completing the application and being told the reporting rules and being advised to report changes in employment on the application. Based upon the close proximity in time of the application and starting employment, the evidence established that the Respondent intentionally withheld or failed to report information to the Department when required and thus an IPV is established for FIP Cash Assistance benefits.

After review of the FAP overissuance budgets as discussed below, it is determined that the Department did not establish an overissuance for FAP benefits due to budget errors, and thus an IPV is not established. See FAP Overissuance analysis of the FAP OI budgets.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (October 2016), pp. 35-36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based on evidence introduced at the hearing, draws a conclusion of law, and determines whether the Department policy was appropriately applied. BAM 600, p. 38.

Based on the foregoing information and evidence, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI of FAP benefits. Remember, policy states that the amount of the OI is the benefit amount the group or provider *actually received* minus the amount the group was eligible to receive. BAM 720, p. 8 (emphasis added). Pursuant to this policy, the Department must present evidence showing the correct calculation of the FAP overissuance in accordance with Department policy, here the OI budgets were incorrect as they included certified child support as unearned income when calculating the overissuance. Therefore, the Department has failed to establish by a preponderance of evidence that Respondent received an OI of [REDACTED] in FAP benefits and thus has not established an IPV.

Furthermore, Department policy states that suspected IPV means an *OI exists* for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1 (emphasis added). Moreover, the Bridges Policy Glossary (BPG) defines 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. BPG 2015-015 (October 2015), p. 36 (emphasis added). Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2014-015, p. 36. Because the Department cannot establish an OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16.

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. 16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. 17. 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.

In this case, the Department has established by clear and convincing evidence that Respondent has committed an IPV and thus is entitled to a finding of disqualification of Respondent from receipt of FIP Cash Assistance benefits. Because the Department did not establish an IPV of Food Assistance benefits, the Department is not entitled to a finding of disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to

receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, (May 1, 2014), p. 7.

For the period December 1, 2015 through March 31, 2016 the Department alleges that Respondent received an OI of ██████ in FAP and ██████ in FIP that the Department asserts that the Respondent was overissued. Exhibit A, p. 57-66 (FAP) and 56 (FIP). The Department properly determined the OI period start date in accordance with granting time for reporting and processing before beginning the OI period. BEM 212 and BAM 720.

FAP Overissuance

The Department presented OI budgets for FAP which were reviewed at the hearing. It appears that several of the budgets are incorrect as they included as unearned income certified child support. Department policy regarding determination of unearned income provides that **for FAP** the Bridges system excludes collections retained by MDHHS (certified support) and court ordered support payments the group receives after the child support certification effective date. BEM 503, (July 2017), p. 7. Certified support means court-ordered payments the Michigan State Disbursement Unit (MiSDU) sends to MDHHS due to a child's receipt of assistance. Office of Child Support refers to these collections as retained support. BEM 503 (July 2017), p. 7.

The Department provided a Child Support Search for Respondent's two children which indicates the following amount reported as received for certified child support Child ██████, January 27, 2016 in the amount of ██████ and February 2016 in the amount of ██████. Exhibit A, p. 70. The following amounts were received for certified child support for Child ██████: December 2015 in the amount of ██████ and January 2016 in the amount of ██████ Exhibit A, p. 71.

A review of the FAP OI budget for January 2016 shows total unearned income from FIP of ██████ which is incorrect as FIP was ██████. The child support included as unearned income includes certified child support of ██████ for Child ██████ and ██████ Child ██████ Exhibit A, pp. 61-61. The OI budget for this month is incorrect because the FIP amount is incorrect and the Department included the child support which is certified and was retained by the State of Michigan. Certified support means court-ordered payments the Michigan State Disbursement Unit (MiSDU) sends to MDHHS due to a child's receipt of assistance. Office of Child Support refers to these collections as retained support. BEM 503 (July 2017), p. 7. Thus, the Department has not demonstrated that it is entitled for a FAP OI for January 2016 of ██████ as the OI budget as presented is incorrect.

A review of the FAP OI budget for February 2016 shows total unearned income from FIP of ██████ which is correct. The child support included as unearned income includes certified support of ██████ for Child Abigail and ██████ for Child ██████. Exhibit A, p. 63-64. Based upon BEM 503 the Department incorrectly included as unearned income the certified child support for Child ██████ and Child ██████ because it is certified child support and cannot be included as unearned income as explained above. Thus, the Department has not

demonstrated that it is entitled to a FAP OI for February 2016 of [REDACTED] as the OI budget as presented is incorrect.

A review of the FAP OI budget for March 2016 includes FIP of [REDACTED] which is correct. The Department also included certified child support for Child [REDACTED] of [REDACTED] and [REDACTED] for Child [REDACTED]. Exhibit A, p. 73-74. The Child Support Search provided as evidence to establish child support does not include any information for the month of March 2016, thus it cannot be determined what the child support was for either child for that month. Thus, the Department failed to establish an OI for March 2016 in the amount of \$ [REDACTED] as the OI budget as presented is incorrect.

A review of the FAP OI budget for December 2015 includes FIP in the amount of [REDACTED] which is correct. The budget also includes child support for Child [REDACTED] of [REDACTED] and for Child [REDACTED]. The child support search shows that the [REDACTED] received for Child [REDACTED] is certified child support and cannot be included as unearned income as it is retained by the state. Thus, the Department failed to establish an OI for December 2015 in the amount of [REDACTED] as the OI budget as presented is incorrect.

In conclusion, the Department is not entitled to an overissuance for FAP benefits of [REDACTED] as it has not established an overissuance.

FIP Overissuance

The Department is seeking a FIP overissuance of [REDACTED] after crediting the certified child support received by the Respondent. Department policy found in BAM 720 requires the Department subtract from the OI amount any net assigned **current support collections (not arrears)** retained by the state for the benefit period:

- If the group was ineligible for FIP during the overissuance period, subtract the net support collections retained.
- If the group was eligible for part of the FIP issued, subtract the portion of the net support collections retained in excess of what the group was eligible for.

Based on the issuance summary for FIP provided, the Respondent was ineligible for FIP for December 2015, January 2016 and February 2016, the months for which the Department seeks a FIP overissuance based upon excess income. Exhibit A, p. 69. The Department did not provide any FIP OI budgets, instead it provided a handwritten chart to establish the FIP OIs after subtracting the certified child support. The Department also provided a Child Support Search to demonstrate that it correctly subtracted the current certified support collections as required by BAM 720. The FAP OI budgets are based on a group size of 4 and the application supports a group size of 4 with three minor children as reported by Respondent at application. Exhibit A, pp. 14 and 16-18.

Child Support is money paid by an absent parent(s) for the living expenses of a child(ren). Medical, dental, child care and educational expenses may also

be included. Court-ordered child support may be either **certified** or **direct**. Certified support is retained by the state due to the child's FIP activity. Direct support is paid to the client.

Child support is income to the child for whom the support is paid. BEM 503, July 2017.

Certified support means court-ordered payments the Michigan State Disbursement Unit (MiSDU) sends to MDHHS due to a child's receipt of assistance. Office of Child Support refers to these collections as retained support.

Bridges excludes collections retained by MDHHS (certified support) and court-ordered support payments the group receives after the child support certification effective date.

Court-ordered direct support means child support payments an individual receives directly from the absent parent or the MiSDU. Bridges counts the total amount as unearned income, except any portion that is court-ordered or legally obligated directly to a creditor or service provider: see BEM 518, **Voluntary/Direct Support**, for direct support income disregard for FIP BEM 503, p.9

A review of the calculations made by the recoupment specialist to credit certified child support indicates the following. December 2015 the Department deducted [REDACTED] in certified child support; the Department deducted certified child support for January 2016 of [REDACTED] and deducted certified child support of [REDACTED] for February 2016 to reduce the OI amount.

The child Support Search provided by the Department indicates certified child support for December 2015 of [REDACTED] and thus the OI for December 2015 of [REDACTED] is correct. The FIP amount received was [REDACTED] less certified child support of [REDACTED]. Exhibit A, p. 69.

For January 2016, the FIP received was [REDACTED] which is correct, and the certified child support deducted was [REDACTED] for Child [REDACTED] resulting in an OI of [REDACTED] [REDACTED] = [REDACTED]. The certified child support of [REDACTED] was **not** deducted for the OI amount and should have been. Thus, the OI of [REDACTED] must be further reduced by the certified support for [REDACTED] and results in an OI of [REDACTED] for January 2016 resulting in an OI of [REDACTED] Exhibit A, p. 69

For February 2016, the FIP received was [REDACTED] which is correct, and the certified child support deducted was [REDACTED] which was correct for child [REDACTED] and resulted in no OI.

In March 2016 ,no OI occurred. Exhibit A, p. 69.

Given the above review the total FIP received was [REDACTED] and the correct amount was [REDACTED] leaving an initial OI of [REDACTED]. The actual OI for December 2015 of [REDACTED] the actual OI for January 2016 was [REDACTED] and the OI for February 2016 was [REDACTED]. Thus, based upon the above review the total FIP OI as demonstrated by the evidence is [REDACTED]. In conclusion the Department has established a FIP OI of [REDACTED] which it 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:

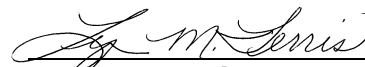
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV of her FIP benefits.
2. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits.
3. Respondent **did not** receive an OI of FAP program benefits in the amount of [REDACTED] from the following program(s) Food Assistance.
4. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) FIP Cash Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the total OI amount for FIP Cash Assistance for [REDACTED] accordance with Department policy less any amount previously recouped.

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

It is FURTHER ORDERED that Respondent be disqualified from FIP for a period of **12 months**.

LF/tm



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

Petitioner

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

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CC:

[REDACTED]
[REDACTED]