



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 1, 2017
MAHS Docket No.: 17-004389
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 2, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself and her husband [REDACTED] also appeared.

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 that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for Food Assistance (FAP)?

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 17, 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 circumstances including changes in income and starting employment.
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 August 1, 2015 through December 31, 2015 (fraud period).
7. During the fraud period, Respondent was issued ██████████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ ██████████
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 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 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.

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 and IPV based upon Respondent's alleged failure to report employment and earnings. The Respondent applied online for FAP benefits on May 21, 2015 and reported that no one in the FAP group was working and the group had zero earned income from employment as Respondent's spouse had been laid off, which at the time was correct. Exhibit A, p. 24 and 35. Thereafter, the Respondent began employment with Flex N Gate on June 1, 2015, 11 days after filing the application for assistance. The Respondent continued to work through October 2015 ongoing. The Respondent's husband's employer completed a Verification of Employment on October 23, 2015 based upon the Department's discovery of a Wage Match sent to the Respondent on October 16, 2017. Exhibit A, p. 45-46.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (July 2015), p. 10. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 11.

In support of its request for a finding of an Intentional Program Violation, the Department presented the following evidence.

The Department presented Respondent's online application dated May 21, 2015, to show that the Respondent was aware of her responsibility to report changes as required. [Exhibit A, pp. 11-40.]

The Department presented Respondent's Application for FAP dated May 21, 2015, which was submitted 10 days prior to the Respondent's husband starting work. [Exhibit A, pp. 24 and 45-46.] In the application the Respondent reported that her husband was not working and thus did not report any employment income. The application demonstrates that the Respondent was advised and aware of the responsibility to report changes and by signing the application agreed to give the Department correct information, and in the section Reporting Changes was advised if she had any doubt about whether to report a change to contact her DHS specialist. The types of changes which must be reported were listed and included employment starts within 10 Days. Exhibit A, p. 34.

The Department presented Respondent's Notice of Case Action dated June 2, 2015 advising her to read each page of the notice carefully. The Notice was issued after her husband had started employment on June 1, 2017 advising Respondent of her eligibility and benefit amount of [REDACTED] ongoing for a group of 5. The Notice clearly demonstrated that the benefits were based on the Respondent receiving zero earned income but did note unearned income. Exhibit A, p.40. The last page of the Notice also noted "Important Information – Please Read which advised Respondent that he had to report changes in circumstances within 10 days including employment and income." Exhibit A, p. 42. The Notice was also sent with a Change Report advising the Respondent to use the form to **report changes about anyone in your home** within 10 days of the time you learn of them and for earned income with 10 days of receiving your first payment. Exhibit A, p. 43.

In addition, the Wage Match and Verification of Respondent's husband's employment was presented demonstrating start of employment and income received beginning June 1, 2015 and first pay received June 15, 2017 for gross income of \$ [REDACTED] Exhibit A, p. 46.

The Respondent's husband credibly testified that he provided the Department his pay stub after starting employment and being paid on June 16, 2015 to let the Department know that he was employed and several foster children were also added to the home at that time and the Department was also advised of the change. Based upon providing the pay stub the and added foster children, the Respondent and her husband believed they were still eligible as they continued to receive FAP benefits and did not know they were not entitled to receive benefits because they assumed the Department would notify them after they reported the employment income. The Department had no record of receiving a pay stub from Respondent.

Based on the foregoing information and evidence, the Department has not established by clear and convincing evidence that Respondent committed an IPV involving her FAP benefits alleging she failed to report starting employment and change in income due to employment earnings. The Respondent's husband credibly testified under oath that he provided a pay stub to the Department to notify them of his employment and hand delivered the pay stub to the DHS office. An IPV is not established by the facts and the

testimony of Respondent's husband. The husband's testimony presented a reasonable explanation of why they believed they were entitled to receive benefits as they believed the Department knew of the employment and the change in their group size. The Respondent and her husband believed they were entitled to receive FAP. The evidence presented is not sufficient to establish by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP benefits or eligibility. As such, the Department has not established that Respondent committed an IPV of FAP benefits.

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; BEM 708 (October 2016), p. 1. 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. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. 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.

As stated previously, the Department has not established that Respondent committed an IPV of her FAP benefits. However, the Respondent did receive an overissuance of FAP the Department is entitled to recoup as she received FAP benefits she was not entitled to received based upon the FAP group income being over the Gross Income Limit as established by the overissuance budgets. Moreover, it is found that the Department applied the appropriate OI begin date after applying the appropriate reporting and processing time periods (10/10/12) allowing for application of 32 days from June 1, 2015 and correctly started the OI period on August 1, 2015. [See BAM 720, p. 7 and BAM 705 (July 2014), p. 5.

In this case, the Department presented OI budgets from August 2015 through December 31, 2015. [Exhibit A, pp. 60-75.] The budgets included Respondent's income that was not previously budgeted which when included as income caused the FAP group gross income to exceed the gross income limit for the FAP group of 5. A review of the OI budgets found them to be fair and correct. In addition, the Department presented a Benefit Issuance Summary to establish that Respondent received FAP benefits during the overissuance period, August 1, 2015 through December 31, 2015. Exhibit A, p. 47-58. As such, the Department's evidence has established that it is entitled to recoup \$ [REDACTED] of FAP benefits it issued during the overissuance period.

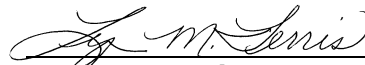
DECISION AND ORDER

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** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) Food Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy.

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

DHHS

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