



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.: 17-007393
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 August 7, 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) and the Child Development and Care (CDC) program?
2. Should Respondent be disqualified from receiving FAP and CDC benefits?
3. Did Respondent receive an overissuance (OI) of FAP and CDC 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 May 9, 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 FAP and CDC benefits.
3. Respondent was a recipient of FAP and CDC benefits issued by the Department.
4. Respondent was a recipient of FAP benefits issued by the Department as a simplified reporting (SR) group.
5. Respondent was aware of the responsibility to report changes in her circumstances to the Department, such as changes in employment and income.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time periods it is considering the fraud periods for the FAP are July 1, 2014, to August 31, 2014; and January 1, 2015, to February 29, 2016, (FAP fraud period).
8. During the July 1, 2014, to August 31, 2014, FAP 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.
9. The Department alleges that during the July 1, 2014, to August 31, 2014, FAP fraud period, Respondent received an OI in FAP benefits in the amount of \$[REDACTED]
10. During the January 1, 2015, to February 29, 2016, FAP 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.
11. The Department alleges that during the January 1, 2015, to February 29, 2016, FAP fraud period, Respondent received an OI in FAP benefits in the amount of \$[REDACTED]
12. The Department alleges that Respondent received a total FAP OI of \$[REDACTED]
13. The Department's OIG indicates that the time period it is considering the fraud period for the CDC is June 29, 2014, to September 20, 2014, (CDC fraud period).

14. During the CDC fraud period, the Department alleges that Respondent was issued \$[REDACTED] in CDC benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$[REDACTED] in such benefits during this time period.
15. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$[REDACTED]
16. This was Respondent's first alleged IPV of the FAP and CDC program.
17. 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.

The Child Development and Care (CDC) program is established by Titles IV-A, IV-E and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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.

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), pp. 7-8; 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 alleges that Respondent committed an IPV of the FAP because she failed to report when her household income exceeded the income limit for her SR group, resulting in an overissuance of FAP benefits. The Department asserted that Respondent failed to timely report her employment and income and that she later failed to report that her son, Child A, began receiving Retirement Survivors and Disability Insurance (RSDI) benefits, which resulted in the household income exceeding the SR limit. The Department maintained that Respondent was overissued FAP benefits from July 2014 to August 2014 and from January 2015 to February 2016.

Earned income from employment and unearned income from RSDI are considered in the calculation of a client's FAP eligibility and amount. BEM 500;BEM 556 (July 2013), pp. 1-6. FAP recipients who are simplified reporters are required to report income only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200 (December 2013), p. 1. No other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine its total gross income at the end of that month, and if the total gross income exceeds the group's SR income limit, the group must report this change to the Department by the 10th day of the following month. BAM 200, p. 1. The Department sends the client simplified reporting information which explains the reporting requirements based on their circumstances at the time of issuance. The DHS-1605 Notice of Case Action is sent to provide the specific income limit for the group based on the group size. BAM 200, p. 2. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6.

In this case, Respondent was notified, in a Notice of Case Action sent to her on April 3, 2014, that she was required to report when her household's gross income exceeded the SR income limit based on her group size of two, which included Child A. (Exhibit A, pp.27-32). Based on the evidence presented, Respondent was properly advised of her reporting obligations.

The Department provided verification of Respondent's employment through the Work Number showing that she began employment on March 31, 2014, received her first paycheck on April 11, 2014, and continued to be employed and earning income through March 27, 2015. The Department presented a State Online Query (SOLQ) for Child A showing that he began receiving RSDI benefits in the monthly amount of \$ [REDACTED] effective October 2014. A review of the evidence shows that Respondent's household income exceeded the SR limit from May 2014 to August 2014 and from November 2014 to February 2016.

The Department also alleged that Respondent committed an IPV of the CDC program because she failed to report that she gained employment and was earning income and further that she failed to report Child A's RSDI.

In support of its contention that Respondent committed an IPV of the FAP and CDC programs, the Department presented an assistance application submitted by Respondent to the Department on April 1, 2014, on which she only reports her earnings from [REDACTED]. Although Respondent failed to disclose that she was hired at her new job the day before, she had not yet received her first pay and was not required at this time to report her earnings.

While the Department did not present a Semi-Annual Contact Report for Respondent's FAP case, the Department did provide a March 30, 2015, FAP application that was completed by Respondent during the second fraud period on which she discloses that

she was employed from March 31, 2014, to March 19, 2015, and that her employment ended on March 27, 2015, when she received her final paycheck, consistent with the Work Number report. However, upon review, Respondent failed to disclose that Child A had been receiving RSDI benefits since October 2014.

The Department's evidence was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances on more than one occasion, as well as the penalties for failing to do so. After further review, Respondent failed to report when her household income from employment and unearned income exceeded the SR limit for her group size and as such, the Department's evidence establishes, by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and thus committed an IPV.

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 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

CDC policy imposes the appropriate disqualification and provides that clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence of IPV; twelve months for second occurrence; and lifetime disqualification for the third IPV. BEM 708, pp. 1-3.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. Because this was Respondent's first IPV, she is subject to a one-year disqualification under the FAP and a six month disqualification under the CDC program.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department has alleged that Respondent received an OI of FAP and CDC benefits.

FAP OI

The amount of a FAP OI 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.

At the hearing, the Department established that Respondent was issued \$[REDACTED] in FAP benefits for the period between July 2014 and August 2014 and that Respondent was issued FAP benefits in the amount of \$[REDACTED] from January 2015 to February 2016 for a

total FAP issuance of \$ [REDACTED]. The Department contended that Respondent's failure to report when her household's income exceeded the SR limit caused an OI of FAP benefits in the total amount of \$ [REDACTED] as the Department alleged that Respondent's group was eligible for \$ [REDACTED] in FAP benefits during the FAP fraud periods. For failure to report income over the simplified reporting limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 4-5; BAM 720, p. 7. In this case, Respondent's household income exceeded the simplified reporting income limit in May 2014 and again in November 2014. Therefore, the Department properly began each of the FAP OI periods for the unreported income in July 2014 and January 2015.

In support of its FAP OI case, the Department presented Respondent's verification of employment through the Work Number which detailed her pay dates and amounts earned. The Department also presented an SOLQ for Child A showing his monthly RSDI benefit amount. The Department also presented FAP OI Budgets for each month in the fraud period to show how the \$ [REDACTED] OI was calculated. A review of the budgets shows that, when the unreported income is included in the calculation of her FAP eligibility, Respondent was eligible to receive \$ [REDACTED] during the FAP fraud periods.

Thus, the Department is entitled to recoup or collect from Respondent \$ [REDACTED] in FAP benefits which is the difference between the \$ [REDACTED] in FAP benefits actually issued and the \$ [REDACTED] in FAP benefits she was eligible to receive.

CDC OI

For CDC cases, the amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (January 2016), pp. 1, 6. A client error CDC OI occurs when the client receives more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 715, p.1.

At the hearing, the Department established through its benefit summary inquiry that the the State of Michigan issued a total of \$ [REDACTED] in CDC benefits on Respondent's behalf from June 2014 to September 2014. (Exhibit A, pp. 71-73). The Department alleged that because Respondent's monthly income was in excess of the CDC income limit of \$ [REDACTED] based on her two-person group size, Respondent was eligible for \$ [REDACTED] in CDC benefits during the CDC fraud period; and thus, the Department alleged that Respondent received a CDC OI of \$ [REDACTED] (Exhibit A, pp. 64-66).

The Department presented sufficient evidence to establish that Respondent's income was in excess of the CDC income limit during the months between June 2014 and September 2014. As such, the Department has established that Respondent was overissued CDC benefits in the amount of \$ [REDACTED].

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 the FAP and CDC program.
2. Respondent did receive a FAP OI in the amount of \$ [REDACTED]
3. Respondent did receive an OI of CDC benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the FAP OI amount of \$ [REDACTED] and the CDC OI amount of \$ [REDACTED] in accordance with Department policy, less any amounts that have already been recouped/collected.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of 12 months and from the CDC program for a period of 6 months.



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

MDHHS-Wayne-15-Hearings

Petitioner

MDHHS-OIG-Hearings

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