



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 17, 2017
MAHS Docket No.: 17-007877
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 November 1, 2017, from Detroit, Michigan. The Department was represented by Meghan Kerr, 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 Program (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 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 [REDACTED] 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 changes, including changes in income.
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 periods it is considering the fraud periods are March 1, 2014, through June 30, 2014, (fraud period 1); and August 1, 2014, through March 31, 2015, (fraud period 2), (fraud periods).
7. During fraud period 1, Respondent was issued \$3,600 in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$992 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,608 for fraud period 1. At the hearing after review of the OI budgets for fraud period 1, March 1, 2014, through June 30, 2014, the OIG conceded that the budgets as submitted were incorrect as the earned income reported was improperly included; and thus, the OI for this period in the amount of \$2,608 was not substantiated or proved by the evidence.
9. During fraud period 2, Respondent was issued \$7,200 in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$2,338 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$4,862 for fraud period 2, August 1, 2014 through March 31, 2015.
11. This was Respondent's **first** alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service 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. 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 evidence presented demonstrated that during the period August 1, 2014, through March 31, 2015, the Petitioner's husband was working, having resumed employment on June 1, 2014. The Petitioner completed an application on [REDACTED] 2014, at which time she reported that her husband was in the home; and the group had no income. (Exhibit A, p. 78.) A Notice of Case Action was issued by the Department on March 14, 2014, indicating that no income was included by the Department when determining the FAP benefit amount. Another application was completed on [REDACTED] 2014, which again reported that the household had no income but in fact the Petitioner's husband had gone back to work in June 2014. (Exhibit A, pp. 108-109.) The Notice of Case Action issued October 7, 2014, reflected no income for the group when calculating the food assistance benefits. A verification of employment from Petitioner's husband's employer indicated that he returned to work in June 2014. (Exhibit A, p. 125.) In addition, the employer advised that the Petitioner's husband received unearned income based on worker's compensation benefits which continued until June 10, 2014, which were never reported.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change.

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, (October 2017), p. 11-12. See BAM 200 for FAP rules for reporting changes in income (simplified reporting).

In this case the evidence clearly demonstrated that at no time was the Petitioner's husband's employment and income reported to the Department after he resumed employment in June 2014. The Petitioner, when completing an application in [REDACTED] 2014, after her husband resumed employment, reported the household had no income and thus, misrepresented information. Thus, the evidence presented clearly established that an IPV was committed as no employment was reported so the group could continue to receive FAP benefits. The Department, based upon the evidence presented, established by clear and convincing evidence that an IPV was committed.

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 FAP benefits.

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.

The Department's hearing packet initially sought an overissuance for two periods, the first period was March 1, 2014, through June 30, 2014; however, at the hearing, the Department determined based upon the overissuance budgets presented for this period that the budgets were incorrect. The Department alleged that Respondent received an OI in FAP benefits in the amount of \$2,608 for this fraud period. At the hearing, the OIG

conceded that the budgets as submitted were incorrect as the earned income reported was improperly included; and thus, the OI for this period in the amount of \$2,608 was not substantiated or proved by the evidence. (Exhibit A, pp. 150-158.)

The second fraud period covered August 1, 2014, through March 31, 2015. For this period the Department seeks to recoup an overissuance of \$4,862. Based upon the evidence and the OI budgets for this period the overissuance was established. (Exhibit A, pp. 159-176.) The budgets were reviewed at the hearing and appeared to be correct and included the unreported income for Petitioner's husband as well as wage match information for Petitioner's several employers, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] which were not reported as well. The Department correctly used the average monthly income for these employers when calculating the monthly income. (Exhibit B.) The Department's OI budgets demonstrated that the Respondent was overissued FAP when the unreported earned income from employment was included in the FAP calculation. The evidence clearly established that Respondent received more FAP benefits than Respondent was entitled to receive because the FAP benefit amounts received were based upon the Respondent having no income. The Department properly determined the OI period in accordance with granting time for reporting and processing before beginning the OI period in August 2014 and applied the 10/10/12 Rule. BEM 105. The Department also presented a Benefit Issuance Summary Inquiry to establish that Respondent received FAP benefits throughout the OI period. (Exhibit A, p. 148.) Based upon the evidence presented, the Department has established that it is entitled to recoup a total of \$4,862 for the FAP benefit OI.

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:

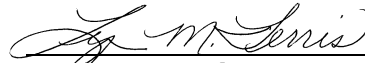
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$4,862 from the following program(s) Food Assistance.
3. The Department **has not** established that Respondent received an OI of program benefits in the amount of \$2,608 for the Food Assistance Program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$4,862 in accordance with Department policy.

The Department is ORDERED to delete any OI and recoupment/collection action and cease any collection action for \$2,608 for the period March 1, 2014, through June 30, 2014.

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

LF/jaf



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

MDHHS-Genesee-6-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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M Shumaker
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L M Ferris
MAHS