



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 7, 2017
MAHS Docket No.: 17-009147
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda Marler

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 22, 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 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 the 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 June 7, 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 truthfully and accurately answer all questions on Applications and Redeterminations as well as the responsibility to report any changes to the Department.
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 September 1, 2014 through February 29, 2016 (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. 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 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.

The Department alleges that Respondent committed an IPV concerning his FAP benefits because he intentionally withheld information concerning his employment income in order to receive or maintain FAP benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 556 (October 2011, July 2013), pp. 2-6, 2-7. FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (May 2012, April 2015), p. 7, 10-11.

In this case, the evidence demonstrated that Respondent was hired by St. Vincent de Paul on June 16, 2014, received his first pay check as of September 12, 2014, and had continuous employment there until his last check issuance on February 26, 2016. Exhibit A, pp. 36-41. Thereafter, the evidence showed that Respondent submitted a Redetermination on or about May 12, 2015 to the Department and the Respondent failed to list any income sources. Exhibit A, p. 33. Finally, the Department provided a Benefit Summary Inquiry showing that the Respondent received FAP benefits in the amount of \$ [REDACTED] for September 2014 and then continued to receive benefits in the amount of \$ [REDACTED] from September 2014 through January 2016. The Department did not provide any evidence of an in issuance from February 2016 other than the OI Budget created in preparation for the hearing.

The Department's evidence established that Respondent did not report his employment income at any time as required and he intentionally misrepresented his circumstances on the Redetermination. Therefore, the Department established by clear and convincing evidence that Respondent 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. 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent has committed an IPV and thus is entitled to a finding of 12-month 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 alleges that the OI period is the same as the fraud period from September 2014 through February 29, 2016. However, the Department did not provide evidence of a benefit issuance for the month of February 2016. Since the Department did not provide evidence that the Respondent was in fact issued benefits in February of 2016, the Department may not recoup or collect any benefits that might have been issued in February of 2016.

Turning to the period from September 2014 through January 2016, the Benefits Issuance Summary as provided by the Department shows that the Respondent received \$ [REDACTED] in FAP benefits. Exhibit A, pp. 42-45. To determine the first month of the overissuance period the Department allows time for: (i) the client reporting period, per BAM 105; (ii) the full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (July 2014), p. 5. In this case, the Respondent did not receive his first paycheck until September 12, 2014. Therefore, he was required to report by September 24, 2014, the Department would have had until October 4, 2014 to process the change, and then the negative action suspension period allow for an additional 12 days to October 16, 2014. This means that the OI period cannot begin until November 1, 2014. Therefore, the OI period and amount must be changed to reflect the application of the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period to arrive at the OI period of November 1, 2014 through January 2016 and a total potential OI of \$ [REDACTED] BAM 715, p. 5.

Finally, the Department presented OI budgets that demonstrated that the Respondent was overissued FAP when the earned income from employment was included in the FAP benefit calculation. Each budget includes the earned income from St. Vincent de Paul in its calculation and no other changes were made to the budgets. Respondent received more FAP benefits than Respondent was entitled to receive because the original FAP benefit amount was based upon the Respondent receiving no earned or unearned income. A review of the OI budgets from November 2014 through January 2016 found them be correct. Exhibit A, pp. 50-78. Based upon the evidence presented the Department has established that it is entitled to recoup a total of \$ [REDACTED] for the FAP benefit OI from November 2014 through January 2016.

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 **received** an OI of program benefits in the amount of \$ [REDACTED] from FAP.

The Department is ORDERED to reduce the FAP OI to \$ [REDACTED] for the period from November 2014 through January 2016, and initiate recoupment/collection procedures in accordance with Department policy.

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



AM/kl

Amanda Marler
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

Via email



Respondent via USPS

