



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.: 17-009400
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 30, 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 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 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 benefits issued by the Department.
4. Respondent was aware of the responsibility to report employment and other 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 June 1, 2011, to October 31, 2011, (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]. A recoupment hearing was held regarding Respondent's FAP benefits on September 20, 2016. A decision was issued by Administrative Law Judge Vicki Armstrong (ALJ Armstrong) on October 6, 2016, on MAHS Docket No. 16-005345. The OI was established and the Department was ordered to initiate collection/recoupment. [Exhibit A, pp. 49-52.]
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 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.

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 or more, or
 - the total amount is less than \$500, 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.
- The client was clearly and correctly instructed regarding his or her reporting responsibilities.
- 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 alleges Respondent committed an IPV of her FAP benefits by failing to report her spouse's employment thereby establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. The Department alleges Respondent failed to timely notify them of her spouse's new employment causing an overissuance of benefits. The Department further alleges that Respondent was aware that she was required to report any changes within 10 days. [Exhibit A, p. 32.] 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. BAM 105 (October 2017), p. 11.

A group's financial eligibility and monthly benefit amount are determined using: (i) Actual income (income that was already received); or (ii) Prospected income amounts (not received but expected). BEM 505 (October 2017), p. 1. Available countable income is used to determine eligibility for FAP benefits. BEM 550 (January 2017), p. 5. Available income is income that is actually received or reasonably anticipated. Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. BEM 505 p. 1. A group's benefits for a month are based, in part, on a prospective income determination. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. BEM 505 p. 1.

In support of its contention that Respondent committed an IPV, the Department presented the application submitted by Respondent in October 2010, showing Respondent acknowledged reading the Department publications regarding her responsibilities for receipt of benefits. [Exhibit A, p. 25.] The application also shows that Respondent's spouse was a household member who also signed the application. [Exhibit A, p. 25.] The Department presented evidence that Respondent's spouse returned to work on April 13, 2011; and received his first paycheck on April 20, 2011. [Exhibit A, pp. 35-36.] The Department mailed Respondent a Notice of Case Action on November 8, 2010; on which Respondent was advised that her benefits were based on zero earned income. [Exhibit A, p. 29.] Respondent's spouse was part of her FAP group. [Exhibit A, p. 28.]

The Department presented evidence showing Respondent's spouse had steady earned income during the fraud period from employment. [Exhibit A, pp. 35-36.] The Department provided a benefit summary inquiry and an issuance summary showing Respondent received benefits during the fraud period. [Exhibit A, pp. 37 and 38.] Respondent's household also received unearned income monthly in the form of Retirement, Survivors, and Disability Insurance (RSDI). [Exhibit A, p. 39.] The additional income from employment coupled with the unearned income meant Respondent's

household received FAP benefits she was not eligible to receive. (See discussion below.)

Respondent's failure to report her spouse's employment after having been notified of the duty to report any employment beginning or ending was sufficient to establish that she intentionally withheld information that, if properly disclosed, would have reduced her FAP benefits. Under these circumstances, it is found that the Department established by clear and convincing evidence that Respondent committed an IPV in connection with her FAP case.

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, pp. 15-16; BEM 708 (4/1/16), p. 1. A disqualified recipient remains a member of an active group as long as she lives with them, and other eligible group members may continue to receive 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. 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/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 committed an IPV of her FAP benefits. Because this was Respondent's first FAP IPV, she is subject to a one-year disqualification from receipt of FAP benefits on the basis of IPV.

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 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 (1/1/16), p. 6; BAM 705 (1/1/16), p. 6.

The issue of overissuance was addressed in the decision issued by ALJ Armstrong, as noted above. According to the OIG, the Department has begun recoupment actions. Therefore, the request for hearing with regards an OI is dismissed.

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 FAP benefits.

It is ORDERED that since the OI issue was addressed in a previous decision and the Department has begun recoupment action the portion of the request for hearing regarding the OI is hereby DISMISSED.

It is FURTHER ORDERED that Respondent be disqualified from receipt of FAP benefits for a period of **12 months** due to IPV.



DM/jaf

Denise McNulty

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]

DHHS

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

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