



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 15, 2017
MAHS Docket No.: 17-009405
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews

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 December 6, 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 Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP 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 June 14, 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. The Department alleges that Respondent was aware of the responsibility to report changes in her household group composition and/or the number of individuals living in her household to the Department.
5. The Department alleges that 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 April 1, 2016 through August 31, 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 [REDACTED], MI [REDACTED] and was returned by the United States Postal Services as undeliverable on November 13, 2017.
11. In Mid-November, the Department received an updated address for Respondent at [REDACTED].
12. A new notice of hearing was mailed to Respondent at the [REDACTED] 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.

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 (January 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that her son, Child A, was not residing with her during the fraud period.

FAP group composition is established by determining all of the following: 1) Who lives together; 2) The relationship(s) of the people who live together; 3) Whether the people living together purchase and prepare food together or separately; and 4) Whether the person(s) resides in an eligible living situation. BEM 212 (October 2015), pg. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives in the group. BEM 212, pg. 1. A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true: 1) The person's location is known; 2) The person lived with the group before an absence (newborns are considered to have lived with the group); 3) There is a definite plan for return; and 4) The absence has lasted or is expected to last 30 days or less. BEM 212, pg. 3.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes that must be reported within 10 days after the client is aware of them include, but are not limited to, changes in persons in the home. BAM 105 (April 2016), pp. 11-12.

In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on October 26, 2015. Respondent listed Child A as a household member (Exhibit A, pg. 15). Respondent electronically signed the application confirming that, under the penalty of perjury, her answers were correct and complete to the best of her knowledge. Further, Respondent acknowledged her responsibility to notify the Department about anyone moving in or out of her home and changes in a child's school attendance (Exhibit A, p. 23). The Department also presented a FEE Investigation Report dated July 28, 2016 which showed that Child A received food assistance benefits in [REDACTED]. The report set forth that, on July 21, 2016, Respondent stated that her son had moved back to [REDACTED] to live with his father and that she left her caseworker a voicemail concerning the change, but did not provide

anything in writing to the Department regarding the change (Exhibit A, p. 41). The Department presented transfer information from ██████████ in Michigan that showed that Child A's enrollment ended on February 1, 2016 (Exhibit A, p. 44). On February 8, 2016, Child A's school in ██████████ requested student records from ██████████ for the purpose of enrollment (Exhibit A, p. 43).

Here, Child A's absence was not temporary; therefore, he could not be considered as still living with the group. BEM 212, p. 3. The absence was longer than thirty days as Child A resided in ██████████ as of February 8, 2016.

The Department's evidence established that Respondent failed to disclose that Child A did not reside with her during the fraud period; however, there was no evidence that Respondent submitted any documentation to the Department alleging that Child A was still residing with her during the fraud period. As such, Respondent's failure to notify the Department that Child A had moved from her home to ██████████ in and of itself, was insufficient to show that she intentionally withheld or misrepresented information concerning the change in her FAP group composition for the purpose of maintaining increasing or preventing reduction of program benefits or eligibility for FAP benefits.

Under these circumstances, it is found that the Department has not 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, p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits and, for all other IPV cases involving FAP, the standard disqualification periods are 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has not established by clear and convincing evidence that Respondent committed an IPV. Therefore, she is not subject to a twelve-month disqualification from receipt of FAP benefits on the basis of an IPV.

Overissuance

When a client group receives more benefits than it is 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 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a FAP OI totaling \$770.00 during the fraud period. Food Assistance OI/UI Budgets for April 2016 through August 2016 recalculated Respondent's FAP benefits as Child A was not included in Respondent's group size for

those months. The budgets set forth an OI amount of \$ [REDACTED] for each month based on a group size of 2 instead of 3 [REDACTED] (Exhibit A, p. 47-56).

The Department presented the Benefit Summary Inquiry for Respondent to demonstrate that Respondent received FAP benefits during the fraud period in the amount of \$ [REDACTED] (Exhibit A, pp. 45).

Due to the reduction of the group size, Respondent was lawfully entitled to \$ [REDACTED] per month during the April 1, 2016 through August 31, 2016 fraud period for a total of \$ [REDACTED] in FAP benefits [REDACTED]

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] [REDACTED] from Respondent for the FAP OI during the fraud 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 FAP benefits in the amount of \$ [REDACTED]

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

MC/kl



Michael Crews

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

