



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 8, 2017
MAHS Docket No.: 17-009435
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. 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 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 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 15, 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 completely answer all questions on the Application for benefits and Redetermination.
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 July 1, 2012 through February 28, 2013 and August 1, 2013 through April 30, 2017 (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. 5; 12-13; ASM 165 (August 2016).

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), 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 an IPV of the FAP by Respondent for misrepresenting her probation status on her Redeterminations dated January 24, 2013 and August 4, 2015. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (November 2012, July 2015), p. 5, 8. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2012, January 2015), p. 1.

The Department presented a [REDACTED] Order of Probation dated November 24, 2009, a Bench Warrant for a probation violation issued on June 11, 2012 and returned on February 28, 2013, and another Bench Warrant for a probation violation issued on July 22, 2013 and returned on April 17, 2017. (Exhibit A, pp. 11-13, 35, and 44) The Department also provided a [REDACTED] Justice System Public Access Case Event Report which outlines all of the events in the case. (Exhibit A, pp. 45-49) The records presented establish that Respondent was in a probation violation status from June 11, 2012 through February 28, 2013 and July 22, 2013 through April 17, 2017.

In support of the IPV, the Department provided two Redetermination submitted by Respondent to the Department on January 24, 2013 and August 4, 2015 and an Application submitted on January 17, 2017 that Respondent submitted electronically. (Exhibit A, pp. 36-43, 60-81). On each Redetermination, Respondent indicated that she was not in violation of probation or parole. On the Application, the Respondent indicated that she was not on probation or parole. Both the Redeterminations and the Application clearly state that the Respondent was required to truthfully and accurately answer all questions on the document. In addition, the Department provided a FAP Benefit Issuance Summary indicating that Respondent received benefits from July 2012 through February 2013 and August 2013 through April 2017.

Respondent did not truthfully identify her probation status on the Redeterminations or Application for benefits. As a result, she received FAP benefits during the fraud period that she was ineligible to receive. A review of the evidence submitted by the Department establishes by clear and convincing evidence that Respondent committed an IPV of the FAP.

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, 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.

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

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 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged that Respondent was issued FAP benefits in the amount of \$ [REDACTED]. The Department indicates that of the benefits issued, \$ [REDACTED] is an OI attributable to the period from July 1, 2012 through February 28, 2013 and \$ [REDACTED] is an OI attributable to the period from August 1, 2013 through April 30, 2017. The Department further asserts this OI is due to Respondent's probation violation status and she was ineligible for any FAP benefits during these periods.

A review of Respondent's FAP Benefit Issuance Summary presented by the Department supports benefits issued in the amount alleged. (Exhibit A, pp. 41-42). As discussed above, Respondent was ineligible for FAP benefits as she was in violation of her probation in Berrien County. However, since the Respondent had two other group members in her household, the group members remain eligible and the total benefit amount is reduced for the household.

The Department provided OI budgets for July 2012 through February 2013 as well as September 2013 through December 2016 and February 2017 through April 2017. The August 2013 and January 2017 budgets were missing from the packet and it appears that Respondent may not have received benefits in either month. The only item changed in each budget was the Respondent's group size. All other items remained the same. After a review of each budget, the Department properly calculated the OI for each month except February 2013 and June 2016. In February 2013, the Department properly calculated the net income of Respondent and determined that the correct benefit amount for the Respondent's group was \$ [REDACTED] in Section H, yet in Section I Benefit Calculation, the Department listed the correct benefit amount as \$ [REDACTED] instead of \$ [REDACTED] therefore the OI amount is incorrect. Furthermore, since the correct benefit rate was significantly greater than what the Respondent actually received in February 2013, there is no OI for the month. In looking at the June 2016 budget, the Department made the same error. Therefore, the Department did not establish the FAP OI for June 2016.

When taking into consideration the corrected OI budgets from February 2013 and June 2016, the total OI is \$ [REDACTED] less \$ [REDACTED] for February 2013 and \$ [REDACTED] for June 2016 for a total of \$ [REDACTED] of which \$ [REDACTED] is attributable to the period from July 2012 through January 2013 and \$ [REDACTED] is attributable to the period from August 2013 through April 2017. Therefore, the Department is entitled to recoup \$ [REDACTED] from Respondent, which is the difference between the amount of FAP benefits actually issued to her and the amount her household was eligible to receive 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** 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 the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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



AM/kl

Amanda M. T. 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

A large black rectangular redaction box covering the email address.

Respondent via USPS

A large black rectangular redaction box covering the USPS address.