



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 20, 2017
MAHS Docket No.: 17-009498
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 20, 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 his Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving FAP benefits for 12 months?

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 20, 2017, to establish Respondent committed an IPV of his FAP benefits.
2. The Department alleges that a debt has already been established; and thus, does not seek an overissuance in this matter.

3. The OIG has requested that Respondent be disqualified from receiving FAP benefits.
4. Respondent was a recipient of FAP benefits issued by the Department.
5. Respondent was aware of the responsibility to report changes in income and/or employment.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time periods it is considering the fraud period are April 1, 2015, to June 30, 2016; and September 1, 2016, to February 28, 2017, (fraud period).
8. During the fraud period, the Department's Issuance Summary alleges that Respondent was issued FAP benefits by the State of Michigan. [Exhibit A, pp. 34, 65.]
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 US Post Office 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, 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 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 that Respondent committed an IPV of his FAP benefits because he failed to notify the Department when he had income. During the hearing, the Department asserted that a debt has already been established; and thus, the Department did not seek an overissuance in this matter. The Federal Regulations, found at 7CFR273.16, allows the Department to proceed with a disqualification from the FAP program due to (1) intentionally making a false or misleading statement, or misrepresented, concealed or withheld facts.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on July 18, 2013; showing Respondent was aware of his responsibility to report his income. [Exhibit A, pp. 10-21.] The Department asserts that when completing the application process, Respondent acknowledged that he had received the Information Booklet advising of "Things You Must Do" which explained reporting change circumstances including income. [Exhibit A, p. 21.] Additionally, in the July 2013 application Respondent was told that he had to report changes in his income within 10 days of receiving his first paycheck. *Id.*

On the June 2, 2015, redetermination Respondent told the Department that he had no income. [Exhibit A, p. 25.] The payroll information the Department received from Respondent's employer showed he worked sporadically and had some earnings monthly during the fraud period. [Exhibit A, pp. 28-31.] Additionally, although his employment was sometimes sporadic he repeatedly told the Department that he had no earning. In September 2016, Respondent falsely advised the Department that he had not had any income since April 2016. [Exhibit A, p. 32.] Respondent had income in May and June 2016. [Exhibit A, p. 30.]

The Department presented issuance summaries showing Respondent was issued benefits during the fraud period. [Exhibit A, pp. 34, 65.] The budgets that were presented demonstrated that once the unreported income was considered that Respondent was not eligible for all of the benefits that had been issued to him during the fraud period. [Exhibit A, pp. 35-64, 66-77.]

While the aforementioned evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. The record demonstrates that Respondent was asked on several occasions about whether he had income and he repeatedly denied having income and did not report his income when he received it.

Under the circumstances, it is found that the Department did established by clear and convincing evidence that Respondent committed an intentional program violation of his FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720 (May 2014), p. 15. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to disqualification under the FAP program.

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 FAP benefits.
2. During the hearing, the Department asserted that a debt has already been established; and thus, it did not seek an overissuance in this matter.

It is ORDERED that Respondent is subject to disqualification from receipt of FAP benefits for a period of **12 months**.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
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