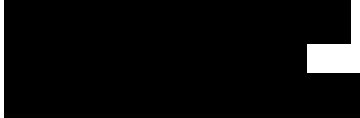




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: January 4, 2018
MAHS Docket No.: 17-009566
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 7, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared and represented herself.

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 21, 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 income, including stopped income.
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, 2015 through January 31, 2016 and September 1, 2016 through November 30, 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.

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.

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.

In this case, the Department alleges that Respondent committed an IPV concerning her FAP benefits because she intentionally withheld or misrepresented information concerning her employment for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Employment income received by the FAP group members is considered in the calculation of the FAP group eligibility and amount. BEM 556 (July 2013), pp. 2-6. FAP recipients, who are not simplified reporters and have earned income, are required to report starting employment or stopping employment. BAM 105 (April 2015 and April 2016), pp. 10-11, 11-12. As to earned income, changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, pp. 10, 11.

In support of its IPV case against Respondent, the Department presented: (1) a January 13, 2015 redetermination signed by Respondent. The Respondent is instructed to report all sources of earned and unearned income and provide proof of all income her household received, including stopped income. Respondent reported only unearned income. (Exhibit A, p. 15); (2) a Notice of Case Action dated February 24, 2015 in which Respondent was approved for FAP benefits based on her reported unearned income (Exhibit A, pp. 18-22); (3) a Change Report dated February 24, 2015 which was not returned. (Exhibit A, p. 23); (4) a March 7, 2016 Verification of Employment submitted by ██████████ ██████████ to the Department that showed Respondent worked from March 30, 2015 through January 11, 2016 (Exhibit A, p. 25); (5) a January 11, 2016 redetermination signed by Respondent. She again only reported unearned income and she did not report her stopped earned income as instructed; (6) a Notice of Case Action dated February 2, 2016 in which Respondent was approved for FAP benefits based on her reported unearned income (Exhibit A, pp. 34-36); (7) a Change Report dated February 2, 2016 which was not returned; (8) an earnings statement requested by the Department from Respondent's employer, ██████████ ██████████ and completed on December 23, 2016 that showed Respondent began employment in July 2016 and was still working (Exhibit A, pp. 41-43); (9) a benefit summary inquiry showing that the FAP group received FAP benefits during the fraud period; and (10) FAP OI budgets for each month during the fraud period showing the calculation of FAP benefits that the FAP group members would have been eligible to receive if the alleged unreported income had been included.

Respondent testified that she did not report the end of her employment with ██████████ because she stopped working prior to her completion of the January 11, 2016 redetermination. However, Respondent testified that she verbally informed her caseworker of changes, such as the beginning and end of her employment. Respondent further testified that her caseworker provided her with employment verification forms that she submitted to her employers and the employers were responsible for returning the information to the Department. As to the change reports, Respondent testified that she did not complete the forms because she assumed that her caseworker was already aware of her employment. Respondent testified that she took any application/redetermination to her caseworker for help with its completion because she did not understand how to complete the forms.

The Department presented evidence showing that Respondent was notified via the February 24, 2015 Notice of Case Action that her FAP benefits were based on her reported unearned income only and she was advised of the responsibility to report changes. Respondent began receiving employment income through [REDACTED] [REDACTED] on March 30, 2015 and through [REDACTED] [REDACTED] in July 2016. The Department testified that the March 7, 2016 Employment Verification was generated by the Department after it became aware that Respondent began employment with [REDACTED] in March 2015. As of the January 11, 2016 redetermination, the Respondent still only reported her unearned income. The February 2, 2016 Notice of Case Action again notified Respondent that her FAP benefits were only based on her reported unearned income and she was again advised of the responsibility to report changes. As of December 2016, the Department's evidence further showed that it generated a request for earnings from Respondent's employer, [REDACTED] [REDACTED] based on income which Respondent began to receive in July 2016.

Here, Respondent was required to report all income, including stopped income. Respondent acknowledged that she did not report her employment with [REDACTED] [REDACTED] on the January 11, 2016 redetermination or the February 2, 2016 change form. Respondent stated that she did not do so because she no longer had earned income from [REDACTED] to report as of January 11, 2016 and, as such, she only continued to report her unearned income. However, it is important to note that Respondent continued to report her unearned income even though the Department was previously notified of this income in January 2015. As such, it is reasonable that Respondent would report her earned income despite her assertion that the Department was previously notified.

Further, Respondent was on notice as of the February 2, 2016 Notice of Case Action that the Department was only considering the unearned income in her FAP benefit calculation. It is also worth noting that if the caseworker was assisting Respondent with her forms, the earned income would have been included in the January 11, 2016 Redetermination. Therefore, it is reasonable to conclude that Respondent did not provide her employment to her caseworker. The Department's case comments, as of November 7, 2016, indicate that when Respondent was asked for proof of income, she then informed Ms. Siemen that she started working in June 2016 (Exhibit A, p. 48). This serves as further support that the Respondent did not report her employment as required.

Because the Respondent did not report her employment, the Department presented clear and convincing evidence that Respondent withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Under these circumstances, the Department established that Respondent committed an IPV concerning 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. 15-16. 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 period is 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 established by clear and convincing evidence that Respondent committed an IPV. As such, Respondent is subject to a twelve-month disqualification 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. 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 (July 2014 and January 2016), p. 6; BAM 705 (July 2014 and January 2016), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$ [REDACTED] during the fraud period, but was eligible for only \$ [REDACTED] in FAP benefits during this period once her income from the employers is included in her budget. The benefit summary inquiry establishes that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period (Exhibit A, p. 45, 47).

Respondent received her first paychecks from the employers on April 10, 2015 and on July 11, 2016. In consideration of the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, Respondent's income from the employers would have to be budgeted for FAP purposes beginning with the June 2015 and September 2016 FAP budgets. BAM 105, p. 10; BAM 720, p. 7. The Department also presented FAP OI Budgets for each month in the fraud period to show how the OI was calculated. (Exhibit A, pp. 50-64, 67-72). Upon review, when Respondent's earned income from employment is included in the calculation of the group's FAP eligibility, Respondent's group was eligible to receive \$ [REDACTED] in FAP benefits during the fraud period.

Thus, the Department is entitled to recoup or collect from Respondent \$ [REDACTED] in FAP benefits, which is the difference between the \$ [REDACTED] in FAP benefits actually issued to her and the \$ [REDACTED] in FAP benefits that she was eligible to receive.

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 did receive an OI of FAP benefits in the amount of \$ [REDACTED]

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

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



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

