



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 18, 2017
MAHS Docket No.: 17-009573
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 14, 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 26, 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 accurately answer all questions on the application for benefits including whether he had employment or 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 December 14, 2015 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** 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.

As a preliminary matter, after the current hearing was scheduled, the Michigan Administrative Hearing System (MAHS) mailed Respondent the Notice of Disqualification Hearing (Notice) via first class mail at the address identified by the Department as Respondent's address. Before the hearing, the Notice was returned to MAHS by the United States Postal Service as undeliverable. At the hearing, the

Department testified that after reviewing recent applications, the Respondent had listed himself as homeless and that the address provided by Respondent had all mail returned as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16(e)(3); BAM 720, p. 12. Under the circumstances presented, where there was no evidence presented that Respondent had a more suitable or recent operational mailing address, the hearing proceeded with respect to the alleged FAP IPV.

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. 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 (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.

The Department alleges that Respondent committed an IPV concerning his FAP benefits because he intentionally withheld information concerning his employment income in order to receive, maintain, or increase his FAP benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 556 (July 2013), pp. 2-7. FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (July 2015), p. 7, 10-11.

In this case, the evidence demonstrated that Respondent was hired by [REDACTED] [REDACTED] (Employer) on August 21, 2014, received his first pay check as of September 8, 2014, and had continuous employment there, with the exception of the month of October 2016, until his last check issuance on November 22, 2016. Exhibit A, pp. 39-43. Thereafter, the evidence showed that Respondent submitted an Application for FAP benefits on December 12, 2015 while working at Employer to the Department and the Respondent failed to list any income sources or employment. Exhibit A, pp. 10-38. Finally, the Department provided a Benefit Summary Inquiry showing that the Respondent received FAP benefits in the amount of \$ [REDACTED] for December 2015 through November 2016. Exhibit A, pp. 44-45. In addition, the Respondent received a FAP benefit of \$ [REDACTED] each month based upon zero income.

The Department's evidence established that Respondent did not report his employment income at any time as required and he intentionally misrepresented his circumstances on the Application for FAP benefits. Therefore, the Department established by clear and convincing evidence that Respondent committed an IPV.

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. 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. 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 has committed an IPV and thus is entitled to a finding of 12-month disqualification of Respondent 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. An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, (May 1, 2014), p. 7.

The Department alleges that the OI period is the same as the fraud period from December 2015 through November 2016. The Department provided benefit OI budgets for December 2015 through October 2016. In reviewing the budgets, the Department made a few errors.

In December 2015 and January 2016, the Department under calculated Respondent's income by a few dollars in each month but the remainder of the calculations for each month were correct. Since the Respondent's income for each month was actually greater than what the Department calculated, the Respondent remains ineligible for benefits for each month and the Department's error was a harmless error.

From February 2016 through August 2016, the Department properly calculated each month and determined the OI.

In September 2016, the Department erred in over calculating the Respondent's income. His actual earned income in September 2016 was \$ [REDACTED] not \$ [REDACTED] as calculated by the Department. Therefore, the OI budget is incorrect for September 2016 and the Department cannot recoup or collect any OI for this month.

In October 2017, the Department budgeted \$ [REDACTED] in unreported earned income for Respondent which is correct. However, inexplicably, the Department reduced the Respondent's benefit down to \$ [REDACTED] despite no income. The OI budget for October 2016 is incorrect and therefore the Department may not recoup or collect for this month either.

Finally, the Department did not provide an OI budget for November 2016. Therefore, the Department may not recoup or collect for November 2016 as it has not met its burden of proof by a preponderance of the evidence that an OI exists.

Therefore, the Department may recoup or collect for the period from December 2015 through August 2016 in the amount of \$ [REDACTED]. The Department may not recoup or collect any alleged OI for the months of September through November 2016.

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 reduce the OI to \$ [REDACTED] for the period December 2015 through November 2016, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the 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.