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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: March 23, 2018
MAHS Docket No.: 17-015353
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 March 22, 2018, from Detroit, Michigan. The Department was represented by Gary Shuk, Regulation Agent of the Office of Inspector General (OIG). Respondent was present with his husband, Roy Reid.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving 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 October 27, 2017, to establish respondent 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 report his circumstances and to report changes in his circumstances to the Department, such as changes in employment and 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 March 1, 2017 through August 31, 2017 (fraud period).
7. The Department has already established a FAP overissuance in connection with this matter.
8. This was Respondent's first alleged IPV.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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 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), pp. 7-8; 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 his husband secured employment. While this 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 maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on [REDACTED], 2016. In the application, it states that the Department must be notified of changes within 10 days of the change, including when employment starts. Also, in the application Respondent indicated he lived with his husband and that his husband did not have any income from employment. The Department also presented a redetermination Respondent submitted on April 7, 2017. Respondent stated his husband was still a group member and there was no written indication of a change in employment/income.

Additionally, the Department presented an employment verification submitted by Respondent's employer which revealed that Respondent's husband was employed and received his first paycheck on January 13, 2017. Respondent's husband was continuously employed throughout the fraud period.

Respondent testified that along with the redetermination, he included three pay statements from his husband's income from employment. Respondent stated that he also notified his worker of his husband's employment in January 2017. Respondent testified that he frequently had difficulty reaching his worker and that items that he submitted to the Department were often misplaced.

Respondent's testimony that he notified the Department of his husband's employment was credible. Therefore, the Department failed to establish by clear and convincing evidence that Respondent was intentionally withholding information for the purpose of maintaining his eligibility for FAP benefits. Thus, the Department has failed to establish that Respondent had the intent to commit 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. 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 she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

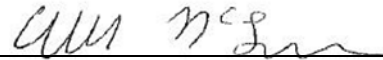
As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Thus, Respondent is not subject to a disqualification from his receipt of FAP benefits on the basis of an IPV.

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 the Department has not established by clear and convincing evidence that Respondent committed an IPV.

It is ORDERED that Respondent is not subject to disqualification from FAP benefits

EM/cg



Ellen McLemore
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:

MDHHS-Genesee-6-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

