



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: June 13, 2018
MAHS Docket No.: 17-016655
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 June 6, 2018, from Detroit, Michigan. The Department was represented by Ryan Sevenski, 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 (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 Food Assistance (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 [REDACTED], 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 report employment and income and report when the simplified reporting limit was exceeded.
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 January 1, 2017 through August 31, 2017 (fraud period).
7. The Department has established an overissuance of FAP benefits in in this case and is recouping the overissued FAP benefits. The Department having established the debt seeks only an Intentional Program Violation in 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 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 2017), 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. 6-7; 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 matter the Department seeks to impose a disqualification of Respondent for FAP benefits due to an alleged IPV for failure to report when he began working and when his FAP group income exceeded the simplified reporting limit of \$3,530.

FAP groups with countable earnings are assigned to the SR category. BAM 200 (January 2017). SR groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size; no other change reporting is required. BAM 200, p. 1.

The Respondent applied for FAP benefits on [REDACTED], 2016 and application filed by Respondent reported his wife's employment and earned income as the only household member who was working. The Department sent a Notice of Case Action to Respondent on November 22, 2016 approving the Respondent for FAP benefits and registering Respondent for work due to FAP participation and indicated the earned income used was \$2,722. Exhibit A, p. 44. In addition, the Notice advised that effective the date of the Notice the only change Respondent was required to report for the FAP program is "WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW, Household size: 6; Income Limit \$3,530.00. Exhibit A, p. 45. The Notice also gave explicit instructions how to determine if the household's monthly income was over the \$3,530 limit. The Notice further advised that if it was determined that the household exceeded the limit, the Respondent had until the 10th of the following month to report to his Specialist the change. The Notice further advised the Respondent about his responsibility to report changes to the Department within 10 days of any changes in circumstances which may affect the group's FAP eligibility, including changes in income, and employment. Exhibit A, p. 47.

The Department sent a Simplified Six Month Review on November 22, 2016 to the Respondent advising him of the FAP groups' simplified reporting status and that a Semi-Annual Contact Report would be sent to him to be completed in lieu of coming in for a review every 6 months. The Simplified Review document made clear the Semi Annual report must be completed, and changes in household income of more than \$100 or unearned income changes of more than \$50 must be reported on the form with proof of current income from the last 30 days reported. Exhibit A, p. 48.

Based upon the Notice of Case Action and the Simplified Six Month Review both sent to the Respondent at the same time, there were two limits to be mindful of, exceeding the simplified reporting limit of \$3,530 and completing the Semi Annual Contact Report to report changes exceeding \$100 for earned income.

On March 1, 2017, the Respondent was sent a Semi-Annual Contact Report at which time Section 4 Household Income asked if the household's monthly income shown as \$2,722 had changed by more than \$100. The Respondent answered the question "No".

The Respondent signed the document on April 27, 2017 certifying the statements on the form were true and correct to the best of his knowledge. Exhibit A, 50. A Wage Match Client Notice was sent to the Respondent on July 28, 2017 regarding Respondent's wife's employment with [REDACTED] requesting Wage Verification by her employer and paystubs for the last 30 days and to be returned August 28, 2017. Exhibit A, p. 51. The work number was also provided as evidence which reported the employment and the gross wages received by Respondent's wife bi-weekly. The Department closed the Respondent's FAP case when the Wage Match Notice was not returned on August 31, 2017.

A review of the gross income at the time of the Semi Annual Contact Report Completion requesting the last 30 days of income from March 1, 2017, indicates that the FAP group had income of \$3,340.00 (February 2017) which was more than \$100 over the \$2,722 income limit, yet the Respondent answered No to the question whether the group income exceeded that limit. See Work Number, p. 54.

In addition, in December 2016 the FAP groups gross income was \$3,629.11 which also exceeded the simplified reporting limit of \$3,530 and was required to be reported by the 10th day of the January 2017 and was never reported. See Work Number, Exhibit A, p. 54.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (January 2018), p. 12. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11-12.

In this case, the evidence established that the Respondent did not report the increase of his wife's income on the Semi-Annual report and did not report within 10 days that the group income exceeded the simplified reporting limit after being advised he was required to do so. Thus based upon the failure of the Respondent to report the change in income and exceeding the Simplified Reporting Limit at any time and failing to respond to the Wage Match Client Notice, the Department has established that Respondent intentionally did so in order to continue to receive FAP benefits and thus has established that Respondent committed an IPV by clear and convincing evidence.

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.

In this case, the Department has established by clear and convincing evidence that Respondent has committed an IPV and thus is entitled to a finding of disqualification of Respondent from receipt of FAP benefits. Because this was Respondent's first IPV a disqualification period of 12 months is established.

Overissuance

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

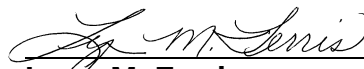
In this case the Department is not seeking an overissuance or recoupment as the Department testified that the debt was established and collection is ongoing. Because an OI is established to support an IPV only, it is determined that Respondent did receive more benefits than he was entitled to received based upon the failure to report changes in income from employment as required, failure as a simplified reporter to report when the SLR was exceeded and at the time of semi annual review.

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. The Department is ORDERED to take appropriate action necessary to disqualify the Respondent from receipt of FAP benefits for a period of **12 months**.

LF/tm



Lynn M. Ferris
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) 763-0155; 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

Melissa Brandt
920 East Lincoln St
Ionia, MI
48846

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: Monica Shumaker
IPV-Recoupment Mailbox