



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: January 24, 2018
MAHS Docket No.: 17-007326
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 October 24, 2017, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). The Respondent represented herself.

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 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 May 4, 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 provide truthful information to the Department at the time of application for assistance.
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 October 25, 2016, to February 28, 2017, (fraud period).
7. During the fraud period, Respondent was issued \$1,508 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$970 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$538.
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 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.

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), 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 2015), 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 her FAP benefits because she failed to notify the Department that her child was not living in her home and was under the guardianship of his maternal grandparents. 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 or obtaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application for FAP benefits submitted by Respondent on October 24, 2016. In the application, Respondent reported that her household included her minor child, a son. Respondent stated that she buys and prepares meals with her son. However, her son had been under the legal guardianship of her parents since June 2016; and he resided in their home. Respondent signed over temporary guardianship to her parents, and it covered the time period of June 2016 until December 31, 2016. [Exhibit A, pp. 47-51.] It provided for revocation of the guardianship which had to be done in writing. Respondent did not provide any documentation to show she had revoked the guardianship.

The Department's Front-End Eligibility (FEE) investigation showed that the grandparents transported Respondent's son to Michigan from Arkansas in March 2016. The child was enrolled in school by the grandparents and their address was the child's address of record until January 2017. The child was with the mother for a short time period in January 2017 and then returned to the grandparents' home. The grandparents petitioned the court for guardianship of Respondent's son on January 9, 2017.

The Department presented a letter from the grandparent that showed Respondent did not reside in their home during the fraud period. Respondent testified otherwise. Even if she did live in the home, she was not the primary caretaker as the grandparents had legal guardianship of the child and provided for his care and custody. The fact that Respondent did not attempt to remove her son from the grandparent's home until after the guardianship expired in December 2016 is further evidence that she knew her son was not under her care and custody.

Under these circumstances, it is found that the Department presented sufficient evidence to establish by clear and convincing evidence that Respondent intentionally misrepresented information for the purpose of obtaining FAP benefits she was not eligible to receive and thereby committed an IPV of FAP benefits.

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 (October 2015), p. 15. Clients are disqualified for 10 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 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. Thus, Respondent is subject to a one-year period of disqualification from her receipt of FAP benefits on the basis of IPV.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Department is seeking recoupment of FAP benefits as it alleges that Respondent received more benefits than she was entitled. The Department has alleged that Respondent was issued \$█████ in FAP benefits during the fraud period. The Department submitted budgets which revealed that Respondent would have been entitled to \$970 in FAP benefits if her son had not been included in the FAP group.

The Department must determine who is included in a FAP group. BEM 212 (January 2017), p. 1. Parents and their children under 22 years of age who live together must be in the same group. BEM 212, p. 1. When a child spends time with multiple caretakers who do not live together, such as joint physical custody, parent/grandparent, etc., the Department must determine a primary caretaker. BEM 212, p. 3. Only one person can be the primary caretaker, and the other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 3. The child is always in the FAP group of the primary caretaker. BEM 212, p. 3. The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 2. Since the grandparents had legal guardianship and physical custody of the child, per policy, Respondent would not be the primary caretaker and the child should not have been included in her FAP group. Accordingly, the Department has established that an overissuance occurred in the amount of \$█████ and is, therefore, entitled to recoup that amount for FAP benefits it issued to Respondent during the fraud period.

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. Respondent **did** receive an OI of program FAP benefits in the amount of \$█████

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

It is FURTHER ORDERED that Respondent be disqualified from FAP 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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