



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 25, 2018
MAHS Docket No.: 17-010790
Agency No.: [REDACTED]
Petitioner: OIG
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 January 24, 2018, 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 the 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 July 19, 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 changes in employment and income to the Department.
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, 2011 through August 31, 2011 (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 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 \$500.00 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), 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 (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 or maintain 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 (January 2010), pp. 1-6. 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 (January 2010), p. 7.

The Department presented evidence of Respondent's Redetermination received by the Department on September 7, 2010, and another received on September 6, 2011. On the 2010 Redetermination, his case worker wrote on the form that he had unemployment compensation benefit income. On the 2011 Redetermination, the Respondent wrote that he was employed with [REDACTED], also known as [REDACTED] (Employer A). However, this was the first time the Department became aware of Respondent's employment. On September 8, 2010, the Department issued a Notice of Case Action approving Respondent for \$ [REDACTED] in FAP benefits based upon \$ [REDACTED] of earned income and \$ [REDACTED] of unearned income.

In this case, the Respondent was employed with Employer A from October 18, 2010 through September 2, 2011, with his last paycheck having been issued on September 2, 2011. (Exhibit A, pp. 26-30) The evidence also demonstrated that Respondent was employed by [REDACTED] (Employer B) from May 5, 2011, through May 18, 2011, and received his final paycheck on May 27, 2011. (Exhibit A, pp. 24-25).

Respondent's employment with [REDACTED] began 41 days after the Department received his 2010 Redetermination and 40 days after the Notice of Case Action was issued. The Notice of Case Action advised Respondent on the last page that he must report changes to the Department within 10 days of the change in itself. In addition, the Department provided a Benefit Summary Inquiry showing that the Respondent received FAP benefits in the amount of \$ [REDACTED] for the period from February 1, 2011 through August 31, 2011 the same rate Respondent was expected to receive based upon zero employment income.

The Department's evidence established that Respondent was aware of the responsibility to report changes in employment or income, that he did not timely report his employment income, and that the failure to report the new employment or income was intentional based upon the proximity in time from the Redetermination to the start of

his employment. 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 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, p. 7.

A review of the FAP Benefit Summary Inquiry as provided by the Department shows that the Respondent was issued \$██████████ in FAP benefits for the period from January 1, 2011, through August 31, 2011. (Exhibit A, pp. 31-32.) The Department alleges that the OI period is the same as the fraud period. To determine the first month of the OI period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (January 2016), p. 5. Based on the above policy and Respondent's receipt of his first paycheck on November 5, 2010, the Department properly applied the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period to arrive at the OI beginning date of January 1, 2011. BAM 715, p. 5.

The Department presented OI budgets demonstrating that Respondent was overissued FAP when the earned income from employment was included in his FAP benefit calculation. A review of the OI budgets shows that January, March, and July of 2011 were properly calculated but that the OI budgets for February, April, May, June, and August of 2011 were not. RFT 255 (October 2010), p. 1; RFT 250 (October 2010), p. 1; RFT 260 (October 2010); BEM 550 (September 2010); BEM 554 (January 2011); BEM 556 (January 2010).

In February 2011, Respondent's actual earned income was \$ [REDACTED] whereas the Department calculated his income at \$ [REDACTED] (Exhibit A, pp. 28, 36-37). The Department under calculated Respondent's income by \$ [REDACTED] which is an error in the Respondent's favor. Therefore, the Department's calculation of Respondent's earned income will be used to determine his benefit rate for the month as well as his OI. In either circumstance, Respondent's household net income is over the net income limit of \$ [REDACTED] and results in an OI of \$ [REDACTED] RFT 250, p. 1.

In April 2011, Department properly calculated Respondent's net income of \$ [REDACTED]. However, the Department improperly determined that Respondent was still eligible for \$ [REDACTED] in FAP benefits. As discussed above, the net income limit for a group size of three is \$ [REDACTED] RFT 250, p. 1. Respondent's net income is \$ [REDACTED] above the net income limit; therefore, he would not be eligible for benefits. As above, this error is to the Respondent's benefit and the Department's calculation of a benefit rate will be used to determine an OI of \$ [REDACTED].

In May 2011, the Department calculated Respondent's income to be \$ [REDACTED] which includes one paycheck from Employer A. (Exhibit A, pp. 42-43). However, the Department failed to consider Respondent's income from Employer B totaling \$ [REDACTED] (Exhibit A, pp. 24-25). Therefore, the Department significantly under calculated Respondent's earned income for the month of May. As discussed above, this error was in Respondent's favor and the OI as calculated by the Department for May 2011 will be used in the total OI calculation.

In June 2011, the Department improperly calculated Respondent's earned income to be \$ [REDACTED] however his actual earned income was \$ [REDACTED] (Exhibit A, pp. 29, 44-45). Therefore, the Department over calculated Respondent's income and the remainder of the OI budget calculation is incorrect.

Finally, in August 2011, the Department improperly calculated Respondent's earned income to be \$ [REDACTED] however his actual income was \$ [REDACTED] (Exhibit A, pp. 30, 48-49). Again, his earned income was over calculated. Despite this error, the Department properly determined that the Respondent was ineligible for benefits and had an OI of \$ [REDACTED] as his net income was above the net income limit of \$ [REDACTED] RFT 250, p. 1.

After a review of each month's OI budget, calculations, applicable policy and law, the total OI for Respondent for the period from January 2011 through August 2011 is \$ [REDACTED].

Therefore, based upon the evidence presented the Department has established that it is entitled to recoup a total of \$ [REDACTED] for the FAP benefit OI from January 2011 through August 2011, the difference between the FAP benefits issued to Respondent and the FAP benefits he was eligible to receive. The Department may not recoup or collect for any alleged OI in June 2011.

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 January 2011 through August 2011, and initiate recoupment/collection procedures in accordance with Department policy.

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



AM/

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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]