



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 11, 2018
MAHS Docket No.: 17-012195
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 January 8, 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 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) of the FAP?
3. Should Respondent be disqualified from receiving FAP benefits?

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 August 3, 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 any changes in income within 10 days and the responsibility to respond honestly and accurately to questions on applications and redeterminations.
5. The Department is not aware of the Respondent having any 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 May 1, 2016, to August 31, 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. Respondent had income from employment with TruGreen (Employer) beginning on March 12, 2016. He earned \$ [REDACTED] during the fraud period. Respondent worked on average of 40 hours per week. [Exhibit A, pp. 39-41.] Respondent was employed throughout the fraud period and failed to report the income. [Exhibit A, pp. 39-41.]
10. This was Respondent's **first** alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. 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 \$500.00 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 (1/1/16), 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 (10/1/16), 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). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct, weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits, because he failed to notify the Department of his income. [Exhibit A, pp. 39-41.] The Department alleged Respondent was employed throughout the fraud period and failed to report his income within 10 days or on his redetermination in August 2016. Respondent was the sole member of his FAP group. [Exhibit A, pp. 52-59.]

A group's financial eligibility and monthly benefit amount are determined using: (i) Actual income (income that was already received); or (ii) Prospected income amounts (not received but expected). BEM 505 (October 2017), p. 1. Available countable income is used to determine eligibility for FAP benefits. BEM 550 (January 2017), p. 5. Available income is income that is actually received or reasonably anticipated. Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. BEM 505 (October 2017), p. 1. A group's benefits for a month are based, in part, on a prospective income determination. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. BEM 505 (October 2017), p. 1.

In support of its contention that Respondent committed an IPV, the Department presented: (i) the application submitted in September 2015 on which Respondent reported his unemployment income; (ii) the redetermination submitted by Respondent in August 2016 showing Respondent failed to report his employment income and indicated his household had no income [Exhibit A, p. 45]; (iii) a work number report demonstrating Respondent began working in March 2016 and averaged 40 hours of work per week each week until the end of August 2016. [Exhibit A, pp. 39-41.]

The Department presented the benefit summary inquiry and issuance summary showing Respondent received benefit for a group size of one during the fraud period. [Exhibit A, pp. 50-59.]

Under these circumstances, it is found that the Department established by clear and convincing evidence that Respondent committed an IPV in connection with his 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, pp. 15-16; BEM 708 (4/1/16), p. 1. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16. Clients are disqualified for 10 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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. This was Respondent's first FAP IPV, he is subject to a one-year disqualification from receipt of FAP benefits on the basis of IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (1/1/16), p. 6; BAM 705 (1/1/16), p. 6.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period. The Department presented a benefit summary inquiry showing that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period. [Exhibit A, pp. 50-59.] According to the application and benefit summary inquiry, Respondent was the sole member of his FAP group. The Department presented FAP OI budgets which demonstrated that once the unreported income was taken into consideration Respondent was only eligible for \$ [REDACTED] of the FAP benefits issued to him during the fraud period. [Exhibit A, pp. 52-59.] After the Department applied BAM 220, the policy regarding the standard of promptness, the fraud period was properly started on May 1, 2016.

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits 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 benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

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

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **1 year** due to the first IPV.



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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]