



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 11, 2018
MAHS Docket No.: 17-012885
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews

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 December 11, 2017, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 15, 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. The Department alleges that Respondent was aware of the responsibility to report changes in income and starting/stopping employment.
5. The Department alleges that 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 August 1, 2015 through April 30, 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. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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.

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), p. 5.

As a preliminary matter, at the hearing, the Department testified that after conducting an address search, it concluded that the address provided to MAHS for Respondent was the most current address. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16(e)(3); BAM 720, p. 12. Under the circumstances presented, where there was no evidence presented that Respondent had a more recent mailing address and where the Department's investigation led it to conclude that the address provided to MAHS for the Notice of Hearing was the best available address for Respondent, the hearing proceeded with respect to the alleged FAP IPV.

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.

Employment income received by the FAP group members is considered in the calculation of the FAP group eligibility and amount. BEM 556 (July 2013), pp. 2-6. FAP recipients, who are not simplified reporters and have earned income, are required to report starting employment or stopping employment. BAM 105 (July 2015), pp. 10-11. As to earned income, changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, pp. 10, 11.

In this case, the Department alleges that Respondent committed an IPV concerning his FAP benefits because he intentionally withheld or misrepresented information concerning his employment and earned income for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

In support of its IPV case against Respondent, the Department presented (1) a December 11, 2014 application electronically signed by Respondent in which he acknowledged his responsibility to report changes. In the application, the Respondent is instructed to report all sources of earned and unearned income and provide proof of all income his household received, including stopped earned and unearned income. Respondent did not provide an answer as to household income or assets (Exhibit A, p. 10 and 12); (2) a January 12, 2016 application electronically signed by Respondent. Respondent again did not provide an answer as to household income and assets (Exhibit A, p. 46); (3) a Wage Match Client Notice dated April 14, 2016 submitted to Respondent which showed income earned by Respondent. The Department requested that Respondent submit an attached Wage Verification to his employer, [REDACTED] and return it to the Department by May 16, 2016 (Exhibit A, pp. 73-74); (4) a Work Number inquiry concerning Respondent, who was identified by name, birthdate, and the last four digits of his social security number. The inquiry showed Respondent's employment with [REDACTED] beginning July 23, 2015 and that he earned wages, without interruption, from July 26, 2015 through April 22, 2016. (Exhibit A, pp. 75-77); (5) a benefit summary inquiry showing that the FAP group

received FAP benefits during the fraud period (Exhibit A, p. 79); and (6) FAP OI budgets for the months in which Respondent had earned income during the fraud period: August 2015 through December 2015 and February 2016 through April 2016. The budgets for the aforementioned months showed the calculation of FAP benefits that the FAP group members would have been eligible to receive if the alleged unreported income had been included.

Here, for the month of January 2016, Respondent's pay period end date was January 31, 2016 (Exhibit A, p. 77). As such, Respondent earned wages sometime in January 2016, but he failed to report those wages. Further, per the work number inquiry, Respondent earned wages beginning July 26, 2015 that he did not report. Further, the Department showed that it generated a Wage Match Client Notice and Wage Verification for income that the Department was not aware of until April 2016 based on a computer cross-match.

Because the Respondent had earnings from employment, but did not report his employment and income to the Department, the Department presented clear and convincing evidence that Respondent withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Under these circumstances, the Department established that Respondent committed an IPV concerning his FAP case.

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 2014), p. 15-16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, the standard disqualification period is 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. As such, Respondent is subject to a twelve-month disqualification 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 (May 2014), 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$ [REDACTED] during the fraud period, but was eligible for only \$ [REDACTED] in FAP benefits during this period once his income from the employers was included in his budget. Although the work number showed income for December 2015, the Department did not

show the FAP benefits issued to Respondent in December 2015 in the benefit issuance summary. However, the Department presented FAP OI Budgets for each month in the fraud period to show how the OI was calculated. The December 2015 FAP OI budget set forth that Respondent was issued \$ [REDACTED] in FAP benefits (Exhibit A, p. 89).

However, it appears that the Department did not include the January 2016 budget for the purpose of calculating the FAP OI as Respondent did not have income for January 2016 (Exhibit A, p. 77).

The Respondent received his first paycheck from the employer on July 31, 2015. In consideration of the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, Respondent's income from Employer would have to be budgeted for FAP purposes beginning with the October 2015 budget, not the August 2015 and September 2015 budget as set forth by the Department. BAM 105, p. 10; BAM 720, p. 7. As such, the Department is not entitled to recoup for any alleged FAP OI in August 2015 or September 2015. As previously discussed, January 2016 was not included in the FAP OI based on the Department's evidence.

For the November 2015 FAP OI budget, the Department failed to include income from November 20, 2015 in the amount of \$ [REDACTED] which is listed in the work number pay period summary (Exhibit A, pp. 87-88 and p. 77). Because Respondent earned more than the Department alleged for the November 2015 budget, the FAP OI budget calculation favors Respondent. Based on this lower gross income, the Department established the FAP OI for November 2015 of \$ [REDACTED] (Exhibit A, p. 87).

Accordingly, with August 2015 and September 2015 removed from the FAP OI budgets, the Department established that Respondent received FAP benefits totaling \$ [REDACTED] but was eligible for only \$ [REDACTED]. Therefore, the Department is entitled to recoup or collect from Respondent \$ [REDACTED] in FAP benefits.

DECISION AND ORDER

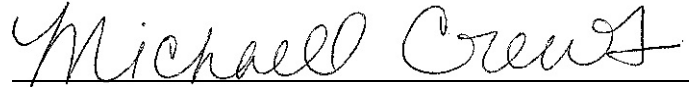
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to reduce the amount of the FAP OI to \$906.00 and initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of \$ [REDACTED] less any amounts already recouped and/or collected.

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

MC/kl



Michael Crews
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



Respondent via USPS

