



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 27, 2018
MAHS Docket No.: 17-011899
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 February 22, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

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 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 31, 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 circumstances to the Department including changes in employment or income.
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 September 2016 through October 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 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 her FAP benefits because she intentionally withheld information concerning her 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 (July 2013), 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 (April 2016), p. 11.

The Department presented evidence of Respondent's Application for benefits received by the Department on May 1, 2016, wherein the Respondent acknowledged her rights and responsibilities. The Department also presented a May 19, 2016, Notice of Case Action which listed the Respondent's FAP benefits for May 2016 as \$ [REDACTED] and for June 2016 through April 2017 as \$ [REDACTED]. On page one of the Notice of Case Action, a note appears reminding the Respondent to report any changes within 10 days. On page two of the document, another note appears indicating that Respondent is classified as a Simplified Reporter and that the only change she was required to report was an increase in income above \$ [REDACTED]. At the time of application, Respondent was on maternity leave and only went to work for an occasional meeting. Therefore, her income did not exceed the limit. Once Respondent returned to work in June of 2016, her added income caused her to exceed the reporting limit. Respondent attempted to contact her case worker during the same week she returned to work, but never got a call back. The Respondent continued to receive FAP benefits based solely upon her then significant other's income and none of her own. In September 2016, Respondent received a six-month review form and elected not to return the form to the Department because she knew that she would be ineligible for benefits. Therefore, her benefits stopped at the end of October 2016. Respondent never followed up with the Department after her first call to her case worker in June because she was busy with work and her new baby.

In this case, it is clear that the Respondent understood her obligations in reporting her return to work especially as she made one attempt to do so. However, Respondent never followed up on her responsibility and continued to receive FAP benefits knowing that her income was above the limit. 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 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. 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. She is subject to a 12-month disqualification of 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 \$ [REDACTED] in FAP benefits for the period from September 2016 through October 2016. (Exhibit A, p. 68) The Department alleges that the OI period is the same as the fraud period and that the OI totaled \$ [REDACTED]. 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 full paycheck on July 1, 2017, 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 September 2016. BAM 715, p. 5.

The Department presented OI budgets demonstrating that Respondent was overissued FAP when her earned income from employment was included in her FAP benefit calculation. A review of the OI budgets shows that the Department did not properly calculate the OI for September and October 2016. It is unclear how the Department calculated the unreported earned income. It also appears as though the Department did not utilize the proper gross income limit or 20% deduction for reported earned income of Respondent's significant other. RFT 260 (October 2015, October 2016), p. 1; BEM 556 (July 2013), p. 1. Therefore, the Department has not met its burden of proof in establishing the total value of the OI of FAP benefits in the amount of \$ [REDACTED].

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 has met its burden of proof in establishing an OI.

3. The Department did not satisfy its burden of showing that it correctly calculated the total value of the OI and must recalculate the OI for the fraud period September 2016 through October 2016.

The Department is ORDERED to recalculate the correct OI amount in accordance with Department policy and send the Respondent a Notice of Overissuance. Respondent shall have the right to request a hearing regarding the OI amount in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits 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

DHHS

[REDACTED]
[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
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