



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 22, 2018
MAHS Docket No.: 17-014461
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 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) and Family Independence Program (FIP) 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 and FIP?

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 October 9, 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 FIP and FAP benefits.
3. Respondent was a recipient of FIP and FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to timely report all changes 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 periods it is considering the fraud period are April 2012 through June 2012 for the FIP and April 2012 through September 2012 for the FAP (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. 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.
9. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$ [REDACTED] and an OI in FAP benefits in the amount of \$ [REDACTED]
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 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

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. 7-8; 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 seeks an intentional program violation (IPV) of the FIP and FAP alleging that Respondent claimed her son as being a household member while he was living with his father in Ohio. The Department also alleges that Respondent trafficked FAP benefits from [REDACTED].

Failure to Report Change in Group Size

The Department presented an IG-180 PARIS Interstate match report for Respondent's son [REDACTED]. This match shows that Respondent's son was listed as a recipient of public assistance benefits in Michigan and Ohio for both FAP and Medical Assistance (MA) benefits as of August 2012. After receiving the match, the Department reached out to its counterpart in Ohio to obtain copies of applications which included Respondent's son as a household member. The applications show that Respondent's son was living with his father and his father's fiancé as of March 19, 2012, but that he had left Ohio by September 21, 2012. Finally, the Department presented a Notice of Case Action from January 31, 2012, listing Respondent's son as a household member, reminding her of the obligation to report any changes, and providing a Change Report form in case she should have need of it. The applications coupled with the PARIS Interstate match show that Respondent's son was not a member of the Respondent's household from March 2012 through August 2012. Furthermore, the Notice of Case Action shows that Respondent was informed of the obligations to report changes in her household approximately one and a half months before her son was confirmed to be in Ohio.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount within 10 days of becoming aware of the change including the number of persons in the home. BAM 105, p. 11.

In this case, the evidence shows that the Respondent purposefully failed to report the change in group size in both her FIP and FAP cases despite being recently reminded of the obligation in order to continue receiving additional benefits for her household. As a result of her failure to inform the Department of the change in group size, the Department has met its burden of proof by clear and convincing evidence that the Respondent has committed an IPV of the FIP and the FAP.

Trafficking of FAP Benefits

Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (July 2013), p. 2; see also Department of Health and Human Services, Bridges Policy Glossary (BPG) (July 2013), p. 65. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2013), pp. 2-3. The federal regulations define trafficking to include “attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2.

In support of its assertion that Respondent trafficked benefits at Six Mile Mart stores #1 and #2, the Department presented two letters of disqualification from the United States Department of Agriculture permanently disqualifying the stores from the Supplemental Nutrition Assistance Program (SNAP). SNAP is the federal name of the Michigan FAP. In addition, the Department presented an IG-312 EBT History for Respondent which details her transactions at both stores. On one day, September 9, 2012, in a matter of six minutes, Respondent’s EBT card was swiped seven times between the two stores for total of \$ [REDACTED]. Both locations are gas station convenience stores with limited space and a limited variety of items for purchase. All clients are presented information upon filing for benefits that they are prohibited from transferring or selling their EBT benefits for cash or other items besides the ordinary purchase of food.

The Department has established by clear and convincing evidence that the Respondent trafficked her FAP benefits at [REDACTED]. Therefore, the Department has met its burden of proof in establishing an IPV by trafficking of 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, p. 15. Clients are disqualified for ten years for a FAP or FIP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP or FIP, 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 she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As referenced above, the Department has satisfied its burden of showing that Respondent committed an IPV of the FAP and FIP by failing to report changes in group size as well as trafficking of FAP benefits. This was Respondent's first FAP and FIP IPV; therefore, she is subject to a one-year disqualification under both the FAP and FIP.

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 Department has alleged that, due to failing to report her income, Respondent received an OI of FAP and FIP benefits. The amount of a FAP and FIP OI is the benefit amount the client actually received minus the amount the client was eligible to receive or in cases of trafficking, the amount of benefits actually trafficked. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

At the hearing, the Department presented a FIP benefit summary inquiry to establish that the State of Michigan issued \$1,791.00 in FIP benefits to Respondent from April 2012 through June 2012. (Exhibit A, pp. 36-37). It also presented a FAP benefits summary inquiry to establish that Respondent received \$ [REDACTED] in FAP benefits from April 2012 through September 2012. (Exhibit A, p. 34) The Department contended that Respondent's failure to report her change in group size caused an OI of FIP benefits in the amount of \$ [REDACTED]. The Department further alleged that a FAP OI was created by the Respondent's failure to report the change in group size and her trafficking of FAP benefits totaling \$ [REDACTED].

As discussed above, Respondent's son was not living in the home from March 2012 through August 2012. The Department provided a budget worksheet to show the reduction in group size and associated reduction in benefits for each month of the OI period for both the FIP and FAP cases. A review of the budget worksheet shows that the OI for each month was properly calculated for both FAP and FIP.

To determine the first month of the overissuance period the Department allows time for: (i) the client reporting period, per BAM 105; (ii) the full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (July 2014), p. 5. Based on the above policy, the Department did not properly apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. The actual OI beginning date is May 1, 2012. BAM 715, p. 5. Therefore, the Department overestimated the OI by one month of benefits for both the FIP and FAP benefits. Accordingly, the OI for FIP is reduced by one month, or \$105.00 for a new FIP OI total of \$ [REDACTED] and one month for FAP, or \$ [REDACTED] for a new FAP OI total of \$ [REDACTED].

The Agency does not pursue benefit OI of less than \$ [REDACTED] per program. BAM 700, p. 9. Therefore, after consideration of the correct OI period allowing for proper reporting, the Respondent's FIP OI is less than \$ [REDACTED] and the Department cannot recoup or collect on this OI.

Turning to the last element of the FAP OI, overissuances for trafficking are equal to the amount of trafficked benefits. BAM 700, p. 2. In this case, the Department properly included the amount of total trafficked benefits, \$ [REDACTED] in the calculation of the OI as seen on the budget worksheet.

After a review of all of the evidence, the Department has met its burden of proof to establish an OI of benefits for the FAP in the amount of \$ [REDACTED]. As discussed above, while the Department has shown that the Respondent received more FIP benefits than she was entitled to receive and establish an OI, the OI amount is less than \$ [REDACTED] and cannot be collected.

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 FAP benefits in the amount of \$ [REDACTED]
3. Respondent **received** an OI of FIP benefits in the amount of \$ [REDACTED] which may not be recouped or collected.

The Department is ORDERED to delete the OI and cease any recoupment or collection action of the FIP OI.

The Department is ORDERED to initiate recoupment/collection procedures of the FAP benefits for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FIP and 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

DHHS

[REDACTED]
[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]