



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.: 17-015138
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 14, 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 the 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 18, 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 and FIP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report any 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 January 2016 through May 2016 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$489.00 in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in FAP and FIP benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and an OI in FIP 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 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), pp. 7-8; 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 alleges that Respondent committed an IPV of the FAP and FIP because she failed to report to the Department that her employment and income had changed causing an overissuance. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105, pp.8-12.

The Department contended that Respondent's failure to report the income caused an OI of FAP benefits in the amount of \$ [REDACTED] and an OI in FIP benefits in the amount of \$ [REDACTED] from January 2016 through May 2016. The Department presented a Work Number Report showing Respondent's employment with Henry Ford Hospital showing that she began employment on December 7, 2015, received her first paycheck on December 18, 2015, and continued to be employed and earning income throughout both the FAP and FIP fraud periods. (Exhibit A, pp. 18-20).

In support of its contention that Respondent committed an IPV, the Department presented a Redetermination completed by Respondent and submitted to the Department on December 15, 2015, five days after she began her new employment. (Exhibit A, pp. 12-20). The Redetermination clearly advised Respondent to answer all questions truthfully and accurately, as well as the penalties for failure to do so. She did not identify her new employment. Respondent's failure to accurately identify her new employment is evidence of an intentional misrepresentation or omission by the Respondent in order to receive benefits. The Department has met its burden of proof by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and thus committed an IPV of the FAP and FIP.

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 10 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. CDC clients who intentionally violate CDC program rules are disqualified by CDC Policy 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 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. 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. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

FAP OI

At the hearing, the Department presented a FAP benefit summary inquiry to establish that the State of Michigan issued \$ [REDACTED] in FAP benefits to Respondent from January 2016 through May 2016. (Exhibit A, p. 21). The Department contended that Respondent's failure to report her income caused an OI of FAP benefits in the amount of \$ [REDACTED] as the Department alleged that Respondent's group was eligible for \$0 in FAP benefits during this period.

In support of its OI case, the Department presented the Work Number Report detailing Respondent's wages during the fraud period. (Exhibit A, pp. 18-20). The Department also presented FAP OI Budgets for each month in the fraud period to show how the OI was calculated. (Exhibit A, pp. 25-29). If an OI occurred, the actual income is used instead of projected income when calculating the OI budget. In FAP cases, income is not converted to a monthly amount when the OI occurred in the benefits month because of a client's failure to properly report the income. BEM 505 (July 2015), p. 12-13. In reviewing the FAP OI budgets, the Department did not properly calculate the OI because it utilized a projected or converted income amount rather than the actual income received by Respondent.

Therefore, upon review, the Department has met its burden of proof in establishing an OI, but it has not met its burden of proof in establishing the total value of the FAP OI for the period from January 2016 through May 2016.

FIP OI

At the hearing, the Department presented a FIP benefit summary inquiry to establish that the State of Michigan issued \$ [REDACTED] in FIP benefits to Respondent from January 2016 through May 2016. (Exhibit A, pp. 22-23). The Department contended that Respondent's failure to report her income caused an OI of FIP benefits in the amount of \$ [REDACTED] as the Department alleged that Respondent's group was eligible for \$ [REDACTED] in FIP benefits during this period.

In order for a FIP recipient to continue to be eligible for FIP benefits, the individual must establish “financial need.” BEM 518 (October 2015), p. 1. Financial need for an ongoing FIP recipient is established when an issuance deficit test shows that the certified group’s payment standard exceeds the individual’s budgetable income by at least \$ [REDACTED] BEM 518, pp. 1-5; RFT 210 (December 2013), pp. 1-2. In determining Respondent’s OI budgetable income, again the actual income should be used instead of the projected income when processing a budget for a past month when that income source is the reason for the OI. BEM 505, p. 12. The income should be converted to a standard monthly amount when appropriate. *Id.* The Department was also required to deduct \$ [REDACTED] from her countable earnings and then deduct an additional 50% of her countable earnings. BEM 518, p. 5. Additionally, the Department is required to exclude any child support income it retained but include any voluntary or direct support paid to the client in determining ongoing FIP eligibility. BEM 518, pp. 5-6.

In support of its OI case, as referenced above, the Department presented the Work Number report for Respondent’s employment which detailed the amounts earned and pay dates. The Department also presented FIP OI Budgets for each month in the fraud period to show how the OI was calculated. (Exhibit A, pp. 101-106). After a review of the budgets, it is unclear how the Department calculated Respondent’s gross income. In some months, it appears that the Department utilized a standardized gross income, in other months, the gross income is significantly less than the expected amount, in other months its significantly more than the expected amount, but no explanation was provided as to how these amounts were calculated. The Department has established a FIP OI based upon Respondent’s receipt of unbudgeted income, but the Department failed to satisfy its burden of showing that it acted in accordance with Department policy in calculating the amount of a FIP OI received by Respondent.

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 established a FAP and FIP OI.
3. The Department **did not** satisfy its burden of showing that it correctly calculated the overissuance amount presented and must recalculate the FAP and FIP OI for the fraud period January 2016 through May 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 and FIP 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]
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