



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 23, 2018
MAHS Docket No.: 17-010239
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on January 22, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). The

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 (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 Food Assistance (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 5, 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 income and employment and to report all information to the Department honestly and accurately.
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 December 1, 2014 through June 30, 2015 (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 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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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. 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.

In this case, the Department seeks to impose an IPV on Respondent of his FAP benefits for Respondent's failure to report his live together partner's (LTP) employment and income. The LTP was a member of the FAP group whose employment began

October 13, 2014. The LTP received her first check on October 24, 2014. Exhibit A, pps. 27-29. On an April 2015 redetermination received April 20, 2015, Respondent reported that no household member was working and the group had no income, he left those sections blank. Exhibit A, p. 34. It was not until June 2, 2015 that on an application for Medical Assistance the partner's work was reported for the first time. Exhibit A, p.44. The Respondent did not report a begin date and reported receiving [REDACTED] an hour, working 40 hours a week. Exhibit A, p. 44.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (December 1, 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

In this case the evidence clearly demonstrated that at the time of the redetermination, the verification of employment from the then employer demonstrated that Respondent's LTP was working and had been since October 13, 2014, yet Respondent did not report on the Redetermination that his LTP was working with earnings when filing the redetermination on April 20, 2015. In addition, the Department presented a prior application filed by Respondent wherein he acknowledged his responsibility to report changes and that he understood and had read his rights and responsibilities. Exhibit A, p. 26. The Respondent only reported the employment to the Department on June 2, 2015 in an application for medical assistance. The Respondent's LTP started work on October 2014 and no work or income was reported until June 2015, even though an opportunity to do so was provided on the redetermination. The evidence completed by the employer Michigan Blood demonstrated that during the period October 13, 2014 through September 2015 Respondent's LTP was employed and received FAP benefits based but Respondent failed to report to the Department that she was working when completing the redetermination when his LTP was working.

In this case the Respondent failed to report his LTP's employment of 8 months duration and failed to do so when requested on the redetermination. The Department's evidence established that Respondent did not report his LTP'S employment which he was required to do. Respondent's leaving the redetermination blank under these circumstances does not excuse failing to provide the information requested. Based upon the extended period of time the employment went unreported, the evidence established that the Respondent intentionally withheld or failed to report information to the Department when required and thus an IPV is established. Thus the Department did establish by clear and convincing evidence that Respondent committed an IPV.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two

years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has established an IPV by clear and convincing evidence an Intentional Program Violation. This is Respondent's first IPV and thus the Department is entitled to a finding of disqualification for a period of one year, (12 months).

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 **overissuance (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, (May 1, 2014), p. 7.

In this case the Department sent the Respondent a Notice of Overissuance on April 25, 2017 together with an Overissuance Summary and a Client Error Repayment Agreement and a Hearing Request for Overissuance. Exhibit B

In the Hearing Request Form the Respondent was advised to file for a hearing by May 8, 2017 to avoid recoupment action and that the Respondent had 90 days from the notice to request a hearing. In accordance with BAM 600, a person requesting a hearing must do so timely and has 90 days from the date of the notice to complete a request for hearing or lose his or her hearing rights. BAM 600, (October 2017) p. 4. In this case Respondent failed to appear at the hearing and present evidence that an appeal was filed and a hearing request was made. Therefore, the overissuance sought by the Department was previously established and no finding of OI needs to be made.

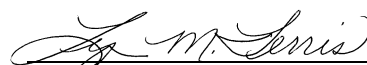
DECISION AND ORDER

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.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance for a period of **12 months**.

LF/cg



Lynn M. Ferris

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:

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

Respondent – Via First Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]