



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 6, 2018
MAHS Docket No.: 17-013264
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 March 1, 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 August 28, 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 provide truthful and accurate information on the Applications and Redeterminations.
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 1, 2015, through December 31, 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. 2-7. 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 2015), p. 11.

In this case, the evidence demonstrated that Respondent was hired by [REDACTED] on June 6, 2015, received her first pay check as of July 17, 2015, and had continuous employment there until her last check issuance on December 2, 2016. (Exhibit A, pp. 55-57). Thereafter, the evidence showed that Respondent submitted a Redetermination on May 2, 2016, to the Department for her FAP and Medical Assistance (MA) benefits; the Respondent failed to list any income sources. (Exhibit A, p. 52). Finally, the Department provided a Benefit Summary Inquiry showing that the Respondent received FAP benefits in the amount of \$[REDACTED] for September 2015 through December 2016. (Exhibit A, pp. 87-89). The evidence also showed that Respondent received this benefit rate based upon no reported income. The FAP benefit rate for a group size of two with \$[REDACTED] in income is \$[REDACTED] per month. RFT 260 (October 2014).

Respondent testified that she did not receive the full \$[REDACTED] for October through December 2016. She believes it was closer to \$[REDACTED] per month but did not have any documentation to support her assertion and did not know the exact dollar amount. Respondent also testified that she verbally told her case worker about her employment in 2015 and says she turned in a pay stub in 2016. Respondent cannot specifically identify the month or day when she had the conversation or provided the pay stubs.

After a review of all of the evidence, the Department has met its burden of proof that Respondent did not report her employment income at any time. Even if she had spoken so her case worker about her employment, she could not identify when she spoke to the case worker or provided verifications of employment, and she failed to truthfully and accurately fill out the Redetermination. She intentionally misrepresented her circumstances on the Redetermination. 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. Respondent is subject to a 12-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, 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.

The Department alleges that the OI period is the same as the fraud period from September 2015 through December 2016. The Benefit Summary Inquiry supports benefits issued in the amount alleged. (Exhibit A, pp. 87-89).

To determine the first month of the overissuance 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 (July 2014), p. 5. In this case, the Respondent received her first paycheck on July 17, 2015. Therefore, the Department properly began the OI period as of September 2015. BAM 715, p. 5.

Finally, the Department presented OI budgets that demonstrated that the Respondent was overissued FAP when the earned income from employment was included in the FAP benefit calculation. Each budget includes the earned income from [REDACTED] in its calculation and no other changes were made to the budgets. After a review of the budgets, it was determined that the Department properly calculated the following budgets: September 2015, March 2016, May 2016, June 2016, August 2016, and November 2016. (Exhibit A, pp. 58-86). The review also showed that for the months of October 2015, December 2015, and December 2016, Respondent's income was over the gross income limit. RFT 250 (October 2016, October 2016), p.1. Therefore, the Department erred in each of these months by calculating a benefit rate, no matter how small, for these months which resulted in a lower total OI than what Respondent should have been assessed. The review further showed that for the months of November 2015, April 2016, July 2016, September 2016, and October 2016, Respondent's income after the appropriate deductions was over the net income limit. *Id.* As above, this was an error on the part of the Department and resulted in an OI smaller than what should have been calculated. Finally, it was noted that the Department did not calculate an OI for January or February 2016 despite the fact that Petitioner received a benefit in each month and was working, unreported, at [REDACTED] during this time. Since each of these errors were beneficial to the Respondent and because the Department had the opportunity to properly calculate the OI budgets, the total OI will remain unchanged.

Respondent received more FAP benefits than she was entitled to receive because the original FAP benefit amount was based upon the Respondent receiving no earned or unearned income. Based upon the evidence presented the Department has established that it is entitled to recoup a total of \$ [REDACTED] for the FAP benefit OI from September 2015 through December 2016.

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 program benefits in the amount of \$ [REDACTED] from the FAP.

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

It is FURTHER ORDERED that Respondent be disqualified from the 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

Petitioner

[REDACTED]

DHHS

[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]
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