



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 15, 2018
MAHS Docket No.: 18-000369
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 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) 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 January 2, 2018, 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.
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 April 2014 through June 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 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 (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.

The Department alleges that Respondent committed an IPV concerning his FAP benefits because he intentionally withheld information concerning his employment income in order to receive, maintain, or increase his 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 (October 2013), p. 9.

In this case, the evidence demonstrated that Respondent was hired by Cracker Barrel (Employer) on May 6, 2013, and continued to work there through 2017. Exhibit A, pp. 103-141. Thereafter, the evidence showed that Respondent submitted Applications for FAP benefits on December 3, 2013; May 28, 2014; and June 1, 2015, while working at Employer but failed to list any income sources or employment. Exhibit A, pp. 12-43, 74-102. Finally, the Department provided a Benefit Summary Inquiry showing that the Respondent received FAP benefits in the amount of \$ [REDACTED] for April 2014 through June 2015. Exhibit A, pp. 106, 108.

The Department's evidence established that Respondent did not report his employment income at any time as required and he intentionally misrepresented his circumstances on the Application for FAP benefits. 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 and thus is entitled to a finding of 12-month disqualification of Respondent 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 April 2014 through June 2015. The Department presented a Benefit Summary Inquiry supporting benefits issued in the amount alleged. (Exhibit A, pp. 106-108). The Department provided benefit OI budgets for each month. In reviewing the budgets, the Department made a few errors.

In July 2014 and September 2014, the Department calculated the budget properly but ultimately determined that Respondent was eligible for \$ [REDACTED] in FAP benefits. Policy provides that the Respondent should have been allotted \$ [REDACTED] in FAP benefits. RFT 260 (December 2013), p. 13. This error causes the total OI to be \$ [REDACTED] less than what the Department should have calculated and is an error in Respondent's favor. It should be noted that the Department had the opportunity to calculate and review the OI prior to the hearing. Since it was an error in Respondent's favor and the Department had the opportunity to correct the error, nothing will be changed; the OI amount for each month will remain the same.

In November 2014, while calculating the OI, the Department made an error in transposing Respondent's income for pay date November 26, 2014. His actual income was \$ [REDACTED] and the Department listed it as \$ [REDACTED]. Again, this error was favorable to the Respondent as it reduced his overall income and made him eligible for additional benefits. Since the error was beneficial to the Respondent, it will not be changed; the OI amount will remain the same.

In October 2014, December 2014, January 2015, March 2015, and April 2015, the Department erred by allotting Respondent a benefit when calculating the OI budgets despite the fact that his monthly gross income was over the gross income limit. The gross income limit for a household size of one was \$ [REDACTED]. RFT 250 (October 2014), p. 1. In each of these months, Respondent's income was over the gross limit as shown by the payroll records. (Exhibit A, pp. 112-141). Since Respondent was over the gross income limit in each of these months, he should not have been allotted any benefits. However, when calculating the OI budgets, the Department allotted Respondent \$ [REDACTED] in FAP benefits. The Department's error creates a total OI less than what Respondent should actually have been assessed. Since the error is in Respondent's favor, it will remain unchanged here as discussed above.

Finally, the Department correctly calculated the OI budgets for April 2014 through June 2014, August 2014, November 2014, February 2015, and June 2015. RFT 260 (October 2013, October 2014), pp. 6-8, 11-12.

While the Department may have under calculated the total OI for several of the months of the OI period, the Department has established that the Respondent received more benefits than he was entitled to receive including the full value of the OI assessed by the Department. Therefore, the Department has met its burden of proof and may collect or recoup the amount requested of \$ [REDACTED] from Respondent for overissued FAP benefits.

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 FAP for a period of **12 months**.



Amanda M. T. Marler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

AM/

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]

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