



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: April 26, 2018
MAHS Docket No.: 18-001473
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 April 23, 2018, from Detroit, Michigan. The Department was represented by ██████████, 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 February 14, 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 **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time periods it is considering the fraud period is June 2012, and January 2013 through April 2013 (fraud period).
6. 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.
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
8. This was Respondent's **first** alleged IPV.
9. 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 her FAP benefits because she intentionally withheld information concerning her employment income in order to receive, maintain, or increase her 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 (January 2010), pp. 1-6. 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 (January 2010), p. 7.

Respondent acknowledged on her Application dated August 26, 2010, having received an informational booklet including the Things You Must Do and Important Things to Know. (Exhibit A, pp. 10-25). However, those items were not presented as evidence and it is unclear whether Respondent was properly informed about her reporting requirements. While the Department testified that Respondent also submitted an Application on December 2, 2012, that application was not submitted by the Department as evidence and it is unclear what the Respondent acknowledged with that application.

Through requests for information sent to Respondent's employer, [REDACTED] (Employer 1), the Department determined that Respondent had worked with Employer 1 from March 30, 2012, through July 6, 2012. (Exhibit A, pp. 26-27).

Through a Work Number Report, the Department determined that Respondent had also worked for [REDACTED]. The Work Number Report as provided by the Department does not list Respondent's employer as [REDACTED] but instead as [REDACTED]. While it is true that [REDACTED] is owned by [REDACTED] as the Department testified to, they are still separate employers; and nothing in the record except for the Department's notes shows actual employment with [REDACTED] but instead with [REDACTED] (Employer 2). The Work Number Report shows that Respondent began employment with Employer 2 on November 9, 2012. It also shows that she continued employment with Employer 2 until her last pay check was received on May 13, 2013.

In this case, the Department has not shown that Respondent was properly informed of her reporting responsibilities. It has not presented a Notice of Case Action informing Petitioner of her benefit rate based upon a certain income amount. It has not presented the information given to the Respondent at the time of application. It has not provided Semi-Annual Contact Reports, Redeterminations, or any other item showing that client was informed of the requirement to report changes or given the opportunity to report changes yet failed to do so. Therefore, the Department has not established by a clear and convincing of the 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 not established by clear and convincing evidence that Respondent has committed an IPV. Therefore, Respondent is **not** subject to a period of disqualification from the FAP.

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 has alleged that Respondent has received more benefits than she was entitled to receive because the Respondent failed to report changes in her employment and income.

The Department alleges that the OI period is the same as the fraud period. The Department presented a Benefit Summary Inquiry supporting benefits issued in the amount alleged. (Exhibit A, pp. 28, 34).

In support of the alleged OI, the Department has presented OI budgets for each month of the OI period. In reviewing those budgets, the Department has improperly reduced Respondent's wages for the first paycheck of each OI month. The Department is required to use actual income received in processing a budget for a past month when that income source is the reason for the OI. BEM 505 (July 2010), p. 10. Therefore, the Department has not met its burden of proof in establishing the total value of the OI.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. The Department **has not** satisfied its burden of proof in establishing the total value of the OI, although it has established that an OI exists.

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 is **not subject to a period of disqualification from the FAP.**



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]
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