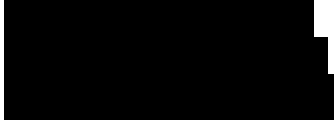




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: January 22, 2018
MAHS Docket No.: 17-010234
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Laura Gibson

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 January 18, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and FIP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and FIP benefits that the Department is entitled to recoup?

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 June 30, 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 changes in her circumstances to the Department, such as changes in employment and 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 July 1, 2016 to October 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. During the fraud period, Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP benefits in the amount of [REDACTED].
11. This was Respondent's first alleged FAP IPV, and first alleged FIP IPV.
12. 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.

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.

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. 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 she had gained employment and was earning income. 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 (April 2016 and October 2016), pp. 9-12.

In support of its contention that Respondent committed an IPV, the Department presented: (i) an application Respondent submitted to the Department on April 26, 2016; (ii) an Employee Voucher Report from [REDACTED], showing Respondent received income for pay periods from December 13, 2015 through April 16, 2016 and June 12, 2016 to October 15, 2016; and (iii) a benefit summary inquiry showing that Respondent received FAP and FIP benefits from July 2016 to October 2016.

The Employee Voucher Report supports the Department's position that Respondent had earned income during some portion of the fraud period. However, no evidence was presented to show that Respondent had submitted any documentation to the Department alleging that she had no income during the period after she had started working and earning income. Respondent appears to have been separated from her position and no longer earning income at the time she submitted her April 26, 2016 application. Respondent's failure to notify the Department that she had returned to her position and was again earning income is insufficient to show by clear and convincing evidence that she had intentionally withheld information concerning her change in circumstances for the purpose of establishing, maintaining, increasing or preventing reduction of FAP benefits or eligibility.

Under these circumstances, the Department has not established that Respondent committed an IPV concerning her FAP case.

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 ten 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. 16. 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.

In this case, the Department failed to establish that Respondent committed a FAP IPV or FIP IPV. Therefore, Respondent is not subject to a disqualification from the FAP or FIP.

Overissuance

In this case, the Department alleges that, because Respondent failed to report her earned income, she received FAP and FIP benefits she was ineligible to receive. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP or 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.

The Department contended that the start date of the OI period would be July 1, 2016, based on Petitioner's return to employment and first pay date of July 8, 2016. However, the Department is required to allow for a 10-day reporting period, a 10-day processing period, and a 12-day negative action period in calculating an OI based on a change in employment. BAM 720, p. 7. In consideration of Respondent's first pay date of July 8, 2016, the OI period would properly begin September 1, 2016.

FAP OI

In this case, the Department alleged a [REDACTED] FAP OI during the FAP fraud period based on Respondent's earned income. However, as discussed above, the OI period would begin September 1, 2016, and as such, the Department has not established a FAP OI for July and August 2016.

To establish the FAP OI amount, the Department presented FAP OI budgets to show the FAP benefits Respondent was eligible to receive if her unreported income had been included in the calculation of her FAP eligibility. A review of the FAP OI budgets for September and October 2016 shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10. A review of the recalculated net income in the FAP OI budgets shows that, when Respondent's income from employment is taken into consideration, Respondent was eligible to receive [REDACTED] in FAP benefits during September and October 2016. Because Respondent received [REDACTED] during this period, she was overissued [REDACTED] in FAP benefits, the difference between the [REDACTED] she received and the [REDACTED] she was eligible to receive. The Department has established a FAP OI of [REDACTED] for the fraud period.

FIP OI

In this case, the Department alleged a [REDACTED] FIP OI during the FIP fraud period based on Respondent's earned income. However, as discussed above, the OI period would begin September 1, 2016, and as such, the Department has not established a FIP OI for July and August 2016.

To establish the FIP OI amount, the Department presented FIP OI budgets to show the FIP benefits Respondent was eligible to receive if her unreported income had been included in the calculation of her FIP eligibility. A review of the FIP OI budgets for September and October 2016 shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10. A review of the recalculated net income in the FIP OI budgets shows that, when Respondent's income from employment is taken into consideration, Respondent was eligible to receive [REDACTED] in FIP benefits during September and October 2016. Because Respondent received [REDACTED] during this period, she was overissued [REDACTED] in FIP benefits, the difference between the [REDACTED] she received and the [REDACTED] she was eligible to receive. The Department has established a FIP OI of [REDACTED] for the fraud period.

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:

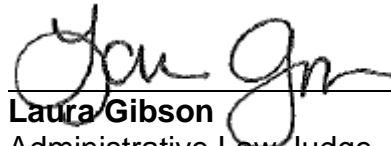
1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of [REDACTED].
3. Respondent did receive an OI of FIP benefits in the amount of [REDACTED].

The Department is ORDERED to:

1. Reduce the FAP OI to [REDACTED]7, and initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of [REDACTED], less any amounts already recouped and/or collected; and
2. Reduce the FIP OI to [REDACTED], and initiate recoupment and/or collection procedures in accordance with Department policy for a FIP OI in the amount of [REDACTED], less any amounts already recouped and/or collected.

It is FURTHER ORDERED that Respondent is not subject to disqualification from FAP and/or FIP benefits.

LG/tlf



Laura Gibson
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:



Respondent – Via First-Class Mail:

