



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 2, 2018
MAHS Docket No.: 17-013504
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 22, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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 FAP benefits for 12-months?

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 31, 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 FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in household employment and/or 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 November 1, 2014 through December 31, 2014 (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:

- 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 or more, or
 - the total amount is less than \$500, 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 (January 2016), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 her FAP benefits because she failed to notify the Department when she secured employment. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on April 1, 2014. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do" which explained reporting change circumstances including employment.

Additionally, the Department presented an Employment Verification completed by Respondent's employer which revealed that Respondent worked from February 25, 2013 through March 27, 2014 and then again from September 11, 2014 through December 4, 2014. Respondent was placed on medical leave on or about March 27, 2014 due to complications with her pregnancy. The Department asserts that Respondent failed to report her return to work. At the time the application was submitted, Respondent was not working.

Respondent testified that she contacted her assigned worker by telephone and left a voice message on September 15, 2014 advising that she had returned to work. Respondent also testified that her employer completed a Work Authorization form which alerted the Department that she would return to work at the end of August. Respondent indicated that she needed an additional week off from work and returned on September 11, 2014.

The Department did not provide any evidence that Respondent reapplied for FAP benefits or that she affirmatively communicated false information to the Department. Accordingly, the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (October 2014), p. 15. A disqualified recipient remains a member of an active group as long as he 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. BAM 720, p. 16. 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

Overissuance

The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (January 2011), p. 5; BAM 705 (July 2011) p 5. In this case, the Department alleged that the Respondent received an overissuance from November 1, 2014 through December 31, 2014 in the amount of [REDACTED]. The Department testified that Respondent failed to report that she returned to work. As previously stated, Respondent indicated that she not only contacted her assigned worker when she returned to work but also submitted a Work Authorization stating that she would return to work at the end of August. Respondent further testified that she contacted her worker when her work ended again in November 2014.

The budgets presented by the Department included the earned income that was not previously budgeted. However, the budget presented by the Department did not include 20% earned income deduction. Under Department policy gross countable earned income is reduced by a 20% earned income deduction. BEM 550 (February 2014), p. 1. However, the 20% earned income deduction is not allowed when determining overissuances due to failure to report earned income BAM 715 (July 2014), p. 8. Because the Department determined that Respondent failed to report her income, it did not include the 20% earned income deduction.

The Department failed to include the Case Comments which would have been recorded at the time Respondent began work. It is possible that Respondent reported the income as stated and the reporting may have been recorded in the Case Comments. Additionally, Respondent's assigned worker at the time did not appear at the hearing to dispute her testimony. Accordingly, Respondent's testimony that she timely reported her return to work is accepted as credible. Therefore, the 20% earned income deduction should have been allowed. By failing to include the 20% earned income deduction, the Department has failed to establish that an overissuance occurred in the amount of [REDACTED].

The budgets provided by the Department clearly show that because the Agency failed to budget the earned income at the time the FAP benefits were initially issued, Petitioner received more benefits than she was entitled to receive. Under Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2016), p. 1.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a FAP benefit OI to Respondent totaling [REDACTED]. However, the Department did establish that a FAP benefit OI did occur as a result of Agency error and the Department is entitled to recoupment once the correct overissuance amount has been established.

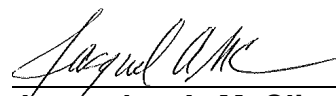
DECISION AND ORDER

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 of FAP benefits.
2. The Department failed to establish that Respondent received an OI of FAP benefits issued from November 1, 2014 through December 31, 2014 in the amount of [REDACTED].
3. The Department is ORDERED to redetermine the overissuance amount for the period of November 1, 2014 through December 31, 2014 based upon Agency error; and
4. Issue a Notice of Overissuance based upon Agency error if the overissuance amount exceeds [REDACTED].

It is FURTHER ORDERED that Respondent is not subject to a 12-month disqualification from FAP benefits.

JAM/tlf



Jacquelyn A. McClinton
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:

