



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 4, 2018
MAHS Docket No.: 17-015285
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 3, 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 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 October 23, 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 report changes in group size to the Department within 10 days.
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 for FAP benefits is June 1, 2016 through October 31, 2016 (fraud period).
7. During the FAP fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████.
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 \$500.00 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 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 that she was no longer the primary caretaker of her two children, which would result in their removal from her FAP group. The Department must determine who is included in a FAP group. BEM 212 (October 2015), p. 1. Parents and their children under 22 years of age who live together must be in the same group. BEM 212, p. 1. When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., the Department must determine a primary caretaker. BEM 212, p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 3. The child is always in the FAP group of the primary caretaker. BEM 212, p. 3. The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 2. The Department will re-evaluate primary caretaker status when any of the following occur: (i) a new or revised court order changing custody or visitation is provided; (ii) there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months; (iii) a second caretaker disputes the first caretaker's claim that the child(ren) sleeps in their home more than half the nights in a month, when averaged over the next 12 months; or (iv) a second caretaker applies for assistance for the same child. BEM 212, p. 5.

In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on December 30, 2015. Respondent indicated that she lived with her two children and the father of the two children. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising his regarding "Things You Must Do" which explained reporting change circumstances, including changes in group size. The Department also presented an application submitted by Respondent on June 29, 2016. In the application, Respondent stated that her two children were in her home and they spent 15 days in her household per month. Respondent also indicated she was the primary caretaker of both children.

The Department also presented a multitude of court documents regarding the custody of the children. The documents show that custody of the children was removed from both parents in January 2016. On March 24, 2016, joint legal custody was returned to both parents, but sole physical custody was awarded to the children's father. The order indicates that parenting time for the Respondent was to be agreed upon by the parties but does not state what was actually agreed upon. On June 13, 2016, an amended order was issued providing joint legal and physical custody to Respondent and the children's father. Respondent and the children's father were to exercise alternating week parenting time. On September 1, 2016, another custody order was issued awarding the children's father primary physical custody. Respondent was given every

other weekend and summer and holiday parenting time. The September 1, 2016 order also states that despite the grant of 50/50 legal and physical custody of the children between Respondent and the children's father on June 13, 2016, the children had been residing primarily with their father since March 2016.

Although it is clear from the court documents that Respondent's children were not primarily in her custody during the fraud period, the Department failed to establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits. When looking at the custody of the children retrospectively, Respondent was not the primary caretaker. However, based on the orders issued, Respondent had a reasonable expectation that she would be a primary caretaker of the children. The order issued in March 2016 awarded Respondent parenting time. It is unclear from the document exactly how much time she could have expected to have the children in her care. The order entered in June 2016 explicitly provides Respondent with 50/50 legal and physical custody. When completing the application on June 29, 2016, Respondent indicated she would have her children in her home 15 days of the month. Based on the court orders at that time, Respondent's statement was accurate. Physical custody of the children was not returned to the father until September 2016. The fraud period ends October 31, 2016. Such a short length of time is insufficient to establish that Respondent was intentionally misrepresenting or withholding information to obtain FAP benefits. Therefore, the Department failed to establish 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. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Thus, Respondent is not subject to a disqualification from her receipt of FAP benefits on the basis of an IPV.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department is seeking recoupment of FAP benefits as it alleges that Respondent received more benefits than he was entitled.

The Department has alleged that Respondent was issued [REDACTED] in FAP benefits during the fraud period based on a group size of three, which included Respondent and her two children. The Department submitted budgets which revealed that Respondent would have been entitled to [REDACTED] in FAP benefits with a group size of one. As stated above, the Department provided sufficient evidence to establish that Respondent was not the primary caretaker of her two children. As such, the children should not have been included in Respondent's FAP group. Accordingly, the Department has established that an overissuance occurred in the amount of [REDACTED], and it is therefore entitled to recoup that amount for FAP benefits it issued to Respondent during the fraud period.

DECISION AND ORDER

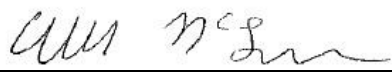
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED], less any amounts already recouped/collected, in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to disqualification from FAP benefits.

EM/cg



Ellen McLemore
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:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]