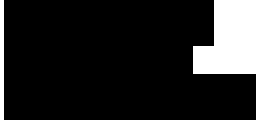




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: January 22, 2018
MAHS Docket No.: 17-015354
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 was present and represented himself.

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)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP 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 October 27, 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 accurately report his employment and income to the Department, and the responsibility to report any changes in his employment and income 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 October 1, 2016 to May 31, 2017 (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 \$500.00 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 by failing to report that he was employed and earning income at the time of application, causing an overissuance. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2016), p. 9. 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, 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 October 20, 2016, on which Respondent indicated that he had no employment income; (ii) an application Respondent submitted to the Department on October 27, 2016, on which Respondent indicated that he had no employment income; (iii) an application Respondent submitted to the Department on May 22, 2017, on which Respondent indicated that he had no employment income, and had not received any income for the prior six months; (iv) a Work Number report showing that Respondent began working for Family Dollar on October 1, 2016, and received his first pay on October 14, 2016; and (v) a benefit summary inquiry showing that Respondent received FAP benefits from October 2016 to May 2017.

Respondent had begun employment at the time he submitted his applications on October 20, 2016, October 27, 2016, and May 22, 2017. However, Respondent did not report any employment income on any of the applications (Exhibit A, pp. 17, 32, 40). Respondent testified that he had reported beginning employment and reported his earnings to his caseworker. Respondent did not report his income on his applications because he was in a hurry, and knew that his caseworker would be following up with him anyways.

On each application, Respondent certified that the information he provided was true and acknowledged understanding that he could be prosecuted for fraud and be required to repay any benefits wrongfully received by him based on the information he provided (Exhibit A, pp. 22, 38, 41). Whether Respondent reported his income to his caseworker or not, Respondent was still responsible for providing accurate and truthful information on his applications. Respondent's failure to report that he had earned income on his applications established that he intentionally withheld information that, if properly disclosed, would have reduced his FAP eligibility.

Based on the evidence presented, the Department has established by clear and convincing evidence that Respondent committed an IPV in connection with his 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 he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has established by clear and convincing evidence that Respondent committed an IPV. Therefore, the Department is entitled to a finding that Respondent is subject to a disqualification from receiving FAP benefits. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from his receipt of FAP benefits on the basis of an IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department alleges that Respondent received an OI of FAP benefits. The amount of a FAP 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.

As discussed above, the Work Number report establishes that Respondent was hired by Family Dollar on October 1, 2016, with a first pay date of October 14, 2016. The report also includes the amount of income Respondent earned, and is sufficient to establish that Respondent had earned income that should have been reported to the Department. In consideration of Respondent being employed and earning income prior to submitting his application, the FAP OI period properly began October 1, 2016. BAM 720, p. 7.

To establish the FAP OI amount, the Department presented FAP OI budgets for each month of the fraud period to show the FAP benefits Respondent was eligible to receive if his unreported income had been included in the calculation of his FAP eligibility. A review of the FAP OI budgets 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 the fraud period. Because Respondent received [REDACTED] during this period, he was overissued [REDACTED] in FAP benefits, the difference between the [REDACTED] he received and the [REDACTED] he was eligible to receive. Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits from October 1, 2016 to May 31, 2017.

DECISION AND ORDER

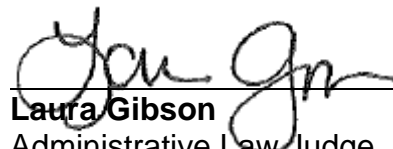
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of [REDACTED].

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

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of twelve months.

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:

