



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: May 24, 2018
MAHS Docket No.: 18-000480
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 May 23, 2018, from Detroit, Michigan. The Department was represented by Ian Gill, Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving benefits for the Food Assistance Program (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 January 4, 2018, to establish that Respondent had 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 circumstances to the Department.
5. Respondent **has difficulties with reading and comprehension which may** limit his understanding or ability to fulfill this requirement; while in school he was enrolled in the special education program; he requires assistance with filling out applications.
6. The Department is not seeking an OI in this case as it has already been established pursuant to a signed repayment agreement dated June 2, 2017.
7. This was Respondent's **first** alleged IPV.
8. 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 (January 2018), p. 8; 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.

The Department alleges that Respondent committed an IPV concerning his FAP benefits because he intentionally withheld information concerning child support income in order to receive or maintain FAP benefits from the State of Michigan. All 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. 2-7; BEM 500 (January 2010). FAP recipients who are not simplified reporters are required to report 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.

In this case, the Respondent was a recipient of Child Support Income in May 2016 totaling \$██████, October 2016 totaling \$██████, November 2016 totaling \$██████, December 2016 totaling \$██████, and January 2017 totaling \$██████. Respondent did not report the income on his January 27, 2017, Redetermination. The income portion of the Redetermination was left blank. Respondent was informed of the responsibility to report changes via a Notice of Case Action dated February 9, 2016. However, Respondent informed the Regulation Agent and testified at the hearing that he has difficulties with reading comprehension and he did not intend to defraud anyone. He tries to fill out the forms the same way each time. Sometimes he has help filling out the forms, and other times he does not. In reviewing the January 2017 Redetermination, Petitioner testified that someone else's handwriting appears on the form in addition to his own. Since the form was from more than a year ago, he is unable to remember who assisted him in filling out the form and whether or not they reviewed each section with him.

Given Respondent's difficulties with reading comprehension and the obvious differences in handwriting seen on the Redetermination, the evidence does not suggest that Respondent intended to defraud the Department. He simply has difficulties with reading comprehension and did not understand enough of the information presented to inform the Department of his circumstances. Therefore, the Department has not met its burden of proof in establishing 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, he is **not** subject to a period of disqualification from the FAP.

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.

It is 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) 763-0155; 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

Kimberly Myers
MDHHS-Marquette-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

██████████
██████████
██████████ MI ██████████

M Shumaker
Policy Recoupment
A Marler
MAHS