



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: June 11, 2018
MAHS Docket No.: 17-016645
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 June 11, 2018, from Detroit, Michigan. The Department was represented by Craig Curtiss, 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 the 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 November 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 benefits issued by the Department.
4. Respondent **was** aware of the responsibility to truthfully and accurately answer all questions on Applications for benefits as well as to report changes in circumstances 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 September 2016 through September 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 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 (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 seeks an intentional program violation (IPV) alleging that Respondent claimed his two children as being household members even though his custody of the children was reduced to less than half of the days in a month and they were not present in the home. In FAP cases, group composition is established by determining who lives together, the relationship of the people living together, whether they purchase and prepare food together, and whether the person resides in an eligible living situation. BEM 212 (October 2015), p. 1. When a child spends time with multiple caretakers who do not live together, the primary caretaker must be determined. BEM 212, p. 3. Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. BEM 212, p. 4. The child is always in the FAP group of the primary. *Id.* The primary caretaker is the person who has the greater number of days of custody. If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. *Id.*

As part of the evidence presented to support the IPV the Department presented two Applications submitted by Respondent on September 21, 2016, and November 14, 2016, on which he listed both of his children in the home. (Exhibit A, p. 29-79.) The Respondent signed both documents certifying that the statements were true. The Department also offered as evidence three custody orders from the 20th Circuit Court-Family Division. The first order dated July 13, 2016, suspended Respondent's parenting time with both of his children. A second order was issued on October 7, 2016, vacating the July 13, 2016, Order and giving Respondent supervised parenting time two hours per week. Finally, a third Custody and Parenting Time Order was issued on July 24, 2017, giving Respondent parenting time one evening each week, alternating weeks or according to a set schedule, and holidays according to a set schedule.

As is clear from the court orders, Respondent did not have joint custody of his children at the time of either Application. The children were not in the home for half of the days of the month. At the time of Respondent's September 2016 Application, all custody and parenting time had been suspended for Respondent with his children. At the time of his November 2016 Application, Respondent was limited to two hours of supervised parenting time per week. Therefore, the Respondent misrepresented his household circumstances. Given that if he had truthfully identified his circumstances to the Department about his children's absence from the home, Respondent would have received a lesser FAP benefit, it appears that Respondent's action was intentional so that he could continue receiving the higher benefit rate. Therefore, the Department has met its burden of proof in establishing by clear and convincing evidence 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; BEM 708 (October 2016), p. 1. 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. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

As discussed above, the Department has met its burden of proof in establishing an IPV. This is the Respondent's first IPV. Therefore, Respondent is subject to a 12-month disqualification from the FAP.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance (OI). The OI is the amount of benefits actually received less the benefits, if any, the person was entitled to receive. BAM 700, p. 1.

In this case, the Department has alleged an OI of \$ [REDACTED] for the period from September 2016 through September 2017 based upon its assertion that the Respondent improperly reported his children's presence in the home on his application for benefits. As discussed above, Respondent's children were not in the home at least half of the month; therefore, Respondent was not entitled to benefits for his children. In each of the months of the OI period, Respondent was issued the full benefit rate of \$ [REDACTED] based on a group size of three with the exception of the first month which was prorated for his application. The Department removed the Respondent's children from the group and determined that Petitioner was eligible for the full benefit rate of \$ [REDACTED] per month with the first month again being prorated based upon his date of application. Then the Department subtracted the Respondent's corrected benefit rate from what he actually received. and correctly calculated a total OI of \$ [REDACTED]

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 **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.



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

Lee Ann Lentner
MDHHS-Kent-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

M Shumaker
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MAHS