



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 1, 2018
MAHS Docket No.: 18-003643
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 31, 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 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 April 10, 2018, 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 income and 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 is November 1, 2016 through January 31, 2017 (fraud period).
7. During the 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), p. 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 her husband was no longer in the home due to his incarceration. The Department also alleged Petitioner failed to timely report her stepson's absence from her household. 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 submitted by Respondent on August 10, 2016. 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. Additionally, in the application, Respondent included her husband and her stepson as individuals living in her home.

The Department also presented a semi-annual submitted by Respondent on January 1, 2017. In the semi-annual, Respondent indicated that her stepson was no longer living in her household. Respondent stated that her stepson moved out of her home on November 15, 2016. Petitioner continued to include her husband as a member of her household.

Additionally, the Department presented court documents showing various charges against Respondent's husband. The Department testified those were the charges that resulted in his incarceration. The documents did not include sentencing information. The Department also presented a Referee Recommendation and Order for a case involving Respondent's husband and the mother of one of his children. The Court document indicates Respondent's husband was incarcerated at the time the hearing took place on November 15, 2016. According to the document, the mother of the child indicated Respondent's husband would be incarcerated for 9 months. Respondent's husband stated he would be released as soon as he completed a class.

The Department testified that an interview was conducted with Respondent. Respondent acknowledged her husband was incarcerated. Respondent stated she believed the incarceration began at the end of August 2016. However, the Department testified that Respondent's husband's incarceration began on September 14, 2016. The Department did not present documentation to verify that information. Respondent did not indicate when her husband was released from jail.

The Department failed to provide sufficient evidence to establish that Petitioner's husband was incarcerated during the fraud period. While it is evident Petitioner's husband was incarcerated on November 15, 2016, it is unclear as to when the incarceration began and when it ended. Therefore, it cannot be found that Respondent's husband was incarcerated for a period long enough to require Petitioner to report that he was out of the household. Additionally, Respondent reported that her stepson was out of the home on January 1, 2017 and had been out of the home since November 15, 2016. There was not a significant lapse of time between the child leaving Respondent's home and the time she reported the change. As such, it cannot be found Respondent intentionally withheld information regarding her stepson to obtain benefits. Without additional evidence showing that Respondent's husband was incarcerated during the fraud period, it cannot be established that Respondent misrepresented her circumstances to fraudulently obtain benefits. Thus, the Department failed to establish by clear and convincing evidence that Respondent was intentionally withholding information for the purpose of maintaining her eligibility for FAP benefits. Therefore, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit 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 she was entitled.

Although the Department properly established that Respondent's stepson was no longer living in the home as of November 15, 2016, the Department failed to establish Respondent's husband's period of incarceration. Therefore, the Department failed to establish that Respondent's husband should have been removed as a group member from Respondent's FAP group during the fraud period. The Department presented overissuance budgets used when calculating Respondent's FAP overissuance. The

Department stated that Respondent's husband was removed as a group member for the entire fraud period and Respondent's stepson was removed in December 2016 and January 2017. The overissuance budgets show that Respondent was overissued FAP benefits in the amount of [REDACTED], based on the removal of Respondent's husband and stepson. As stated above, the Department failed to establish that Respondent's husband was incarcerated throughout the fraud period, and therefore, should have been excluded as a member of the FAP group. Thus, the Department failed to establish that Respondent received an overissuance in FAP benefits in the amount of [REDACTED].

DECISION AND ORDER

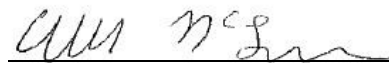
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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

The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.

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) 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

Via Email:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]