



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 27, 2018
MAHS Docket No.: 18-000678
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 19, 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 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 Food Assistance (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 23, 2018, to establish an IPV and disqualification from receipt of FAP benefits. The Department advised the

undersigned during the hearing that the Department has established the overissuance and the debt has been established.

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 circumstance and report income accurately and correctly.
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 April 1, 2017 through November 30, 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] to establish that the \$500.00 IPV threshold is met.
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 2017), 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 (October 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 seeks an Intentional Program Violation (IPV) having represented at the hearing that the Department has established the Debt as alleged in the amount of [REDACTED] and therefore does not require a hearing to establish an overissuance. The Department seeks an IPV due to the Respondent's failure to report on his Semi Annual Contact report dated April 28, 2017 that his income exceeded by [REDACTED] the [REDACTED] income amount the Department was using to determine Respondent's FAP benefit amount and eligibility for FAP benefits when in fact the Department alleges that Respondent's income exceeded that amount and was not reported. In support of its contention, the Department presented the Semi Annual Contact Report completed by the Respondent on April 28, 2017. The report was sent to complete a 6 month review and in Section 4 Household Income it reported that the household's monthly gross earned income (before taxes) used in the FAP budget is [REDACTED] and as the question "Has your household's gross earned income changed by more than [REDACTED] from the amount above? ([REDACTED]), the Respondent answered "No". A yes answer to the question required that the past 30 days income proof of earnings be provided to the Department. Exhibit A, p. 30. The Respondent certified when he signed the Semi Annual that the statements on the form were true and correct to the best of his knowledge.

At the time of the Semi Annual answers the Respondent was employed by [REDACTED] [REDACTED] who filed a Verification of Employment with wage information on November 9, 2017. The wage verification showed earned income for Respondent for February 2017 income was [REDACTED], for March 2017 Respondent's income was [REDACTED], and for April 2017 the income was [REDACTED]. Thus, as can be seen the Respondent incorrectly answered the question which caused him to continue to receive FAP benefits based upon [REDACTED] rather than income significantly higher than that amount.

At the time of the Semi Annual, the Respondent had been previously notified that he was a simplified reporter based upon a December 19, 2016 application and Notice of Case Action sent January 6, 2017. In the Notice the Respondent was advised that he was required to report when his income exceeded the simplified reporting limit (SLR) of [REDACTED]. The Notice also advised the Respondent that his FAP benefits were based upon zero income as the Respondent reported that he had been laid off. Exhibit A, p. 24. Notwithstanding this notification, at no time did the Respondent report that his income exceeded the simplified limit beginning in February 2017, the first month the income exceeded the SLR limit nor did he advise the Department when his income exceeded [REDACTED] at the time of the Semi Annual.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (January 2018), p. 12. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11-12.

In this case the evidence established that the Respondent did not report the increase of his income on the Semi-Annual report and did not report within 10 days that the group income exceeded the simplified reporting limit after being advised he was required to do so. Thus, based upon the failure of the Respondent to report the change in income when he was called back from a lay off and exceeded the Simplified Reporting Limit in February and his answers on the Semi Annual Contact report, the Department has established that Respondent intentionally did so in order to continue to receive FAP benefits and thus has established that Respondent committed an IPV by clear and convincing evidence.

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 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. 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.

In this case, the Department has established by clear and convincing evidence that Respondent has committed an IPV and thus is entitled to a finding of disqualification of Respondent from receipt of FAP benefits. Because this was Respondent's first IPV a disqualification period of 12 months is established.

Overissuance

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

In this case the Department is not seeking an overissuance or recoupment as the Department testified that the debt was established and collection is ongoing. Because an OI is established to support an IPV only, it is determined that Respondent did receive more benefits than he was entitled to received based upon the failure to report changes in income from employment as required, failure as a simplified reporter to report when the SLR was exceeded and at the time of semi annual review.

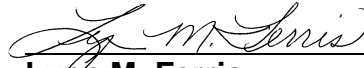
DECISION AND ORDER

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.

The Department is ORDERED to take appropriate action necessary to disqualify the Respondent from receipt of FAP benefits for a period of **12 months**.

LF/cg



Lynn M. Ferris
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:



Respondent – Via First-Class Mail:

