



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: July 3, 2018
MAHS Docket No.: 18-000842
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 July 2, 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 the 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 January 31, 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 truthfully and accurately answer all questions on the application for benefits, semi-annual contact reports, and redetermination.
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 June 2016 through April 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 (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.

In this case, the Department alleges that Respondent committed an IPV by failing to disclose her husband, who had employment income, as a group member resulting in an OI of FAP benefits. Clients must cooperate with the local office in determining initial and ongoing eligibility including completion of necessary forms. BAM 105 (April 2016), p. 9. In addition, they must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 9. Finally, Clients must report changes in circumstances that potentially affect eligibility or benefit amount within 10 days of becoming aware of the change including the number of persons in the home. BAM 105, p. 11.

According to the Work Number Report, a mechanism used by employers to make employment information available to other parties such as the State, [REDACTED] (Husband), began his employment with [REDACTED] (Employer) on [REDACTED] 2015, and provided Employer with the same address that Respondent provided to the Department on her application. The Application submitted by Respondent on June 1, 2016, did not list Husband in the home or his income. Furthermore, Respondent advised the Department that she did not know the identity of her children's father, yet her two youngest children share the same last name as Husband. In October 2016, Respondent completed a Semi-Annual Contact Report and reported no changes. In January 2017, Respondent completed a Redetermination which listed herself and her children on the form but not Husband and again reported no changes. In February 2017, Respondent submitted a Car Loan Application to the Department which listed Husband as the primary applicant and Respondent as the Co-Applicant. Furthermore, Respondent was identified on the loan application as the current spouse of Husband. The application lists Husband's address as the same as Respondent for both the current and previous addresses. It also verifies Husband's employment at Employer.

In reviewing the evidence, Respondent did not truthfully identify her circumstances on the application for benefits nor did she seize the opportunity to correct any mistakes or errors on the Semi-Annual Contact Report or Redetermination. Based upon these forms, Respondent intentionally withheld information about her husband's presence in the home in order to receive more FAP benefits than she would otherwise. The Department has met its burden of proof by clear and convincing evidence that Respondent has 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. Clients are disqualified for 10 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 he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. 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.

In this case, the Department alleged that Respondent was issued FAP benefits in the amount of \$ [REDACTED] from June 2016 through April 2017, and that due to Respondent's failure to report Husband's presence in the home and income, she received more benefits than she was eligible to receive. The Department further alleges that Respondent was only eligible for \$ [REDACTED] in benefits for the entire period.

A review of the Respondent's Benefit Summary Inquiry presented by the Department supports benefits issued in the amount alleged. (Exhibit A, pp. 93-94.) In this case, Respondent misrepresented her circumstances from the start with her Application for benefits. Therefore, the OI period begins at the time of her application.

The Department presented OI budgets for the entire OI period which included Husband's income and should have included him as a group member but did not. Respondent has three children, plus herself, and Husband; therefore, the group size should be five and not four. In addition, in completing the review of the budgets, the Department utilized the incorrect gross income limit. The Department applied the gross income limit of Column A in RFT 250, whereas the limit in Column D should have been used. Policy provides that all applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS); thus, the reason for application of Column D in RFT 250 rather than Column A. BEM 213 (January 2016), p. 1; RFT 250. Despite these errors, Respondent was over the gross income limit, \$ [REDACTED] through September 2016, and \$ [REDACTED] from October 2016 onward, in each month of the OI period except October 2016. The Department did not complete the budget for October 2016 believing that Respondent was over the gross income limit; as a result, the OI is incorrect and no further review will be provided of October 2016. As a result, the OI amount assessed by the Department from October 2016 is removed from the total OI. In addition, the Department did not properly transcribe the benefit issuance for March 2017 and undervalued it by \$5.00 which is why the OI calculation presented by the Department leaves a \$5.00 issuance eligibility on the Investigation Report. Ultimately, this \$5.00 results in a benefit to the Respondent; therefore, the error will continue to be considered in the total OI. The total OI after removal of the OI from October 2016, and the \$5.00 which was already considered in the Department's calculation, is \$ [REDACTED]. Therefore, the Department is entitled to recoup \$ [REDACTED] from Respondent, which is the difference between the amount of FAP benefits actually issued to her and the amount she was eligible to receive during the fraud period.

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 reduce the OI to \$ [REDACTED] for the period FAP, and initiate recoupment/collection procedures in accordance with Department policy.

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



AMTM/

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 Kornoelje
MDHHS-Kent-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

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