



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 10, 2018
MAHS Docket No.: 18-001275
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 9, 2018, from Detroit, Michigan. The Department was represented by Jennifer Allen, 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 the Food Assistance Program (FAP)?
3. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) program benefits that the Department is entitled to recoup?

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 February 13, 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 and MA benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in circumstances to the Department within 10 days of the change itself and to truthfully and accurately answer all questions on Applications and Redeterminations.
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 December 2015 through September 2016 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
9. The Department is not seeking an OI for the FAP because the debt was previously established in December of 2016.
10. This was Respondent's **first** alleged IPV.
11. 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 of the FAP and received an OI of MA benefits because Respondent misrepresented her household circumstances by including her son as a member of the house.

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.*

In MA cases, group composition involving a child is determined based upon which parent has primary custody. The primary caretaker is the parent who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half the days of a month, averaged over a 12-month period. BEM 211 (January 2015), p. 2.

Respondent has not had custody of her son since at least November 2016. This was verified through Child Protective Services (CPS), the child's father, Respondent's statements during the investigation, and neighbors of the Respondent. However, Respondent never reported that her son was out of the home and continued to list him on her Applications for various benefit programs dated December 1, 2015; February 20, 2016; as well as a Redetermination dated September 3, 2016. Respondent was reminded on each of the Applications of the obligation to notify the Department of changes in circumstances and to truthfully answer all questions. The Department only became aware that Respondent's son was out of the home because of a complaint made by the father of Respondent's son. As a result, Respondent was issued FAP

benefits for a group size of two, when she should have only been issued benefits for a group size of one.

Since Respondent did not have custody of her son, she could not claim him as a group member; and she intentionally misrepresented her household circumstances in order to maintain her FAP benefits. Therefore, Respondent has committed an IPV of the FAP and MA program.

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 Department initiates MA recoupment of an overissuance (OI) due to client error or IPV, not when due to agency error. BAM 710 (October 2015), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department alleged that Respondent was overissued \$ [REDACTED] in MA benefits for her son as a result of client error and intentional program violation. Respondent included her son on all applications for program benefits even after she lost custody of him in November of 2016. She never informed the Department that she had lost custody. Therefore, the Department correctly determined that the OI was attributable to the Respondent. In reviewing the Expenditure Summary and Report of Capitations, the Department has correctly calculated the amount of benefits issued and the resulting OI amount. Therefore, the Department may recoup or collect the value of MA benefits issued for Respondent's son 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** 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 MA program.

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 the 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

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] M [REDACTED] [REDACTED]

M Shumaker
Policy Recoupment
A M T Marler
MAHS