



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 17, 2018
MAHS Docket No.: 18-001745
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 12, 2018, from Detroit, Michigan. The Department was represented by Debra Echinaw, 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 February 26, 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 and redetermination for benefits.
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 March 2015 through May 2017 (fraud period).
7. During the fraud period, the Department alleged that 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. Respondent actually received \$ [REDACTED] during the fraud period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
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 because she misrepresented her circumstances by failing to disclose that she had two or more drug-related felony convictions each occurring after August 22, 1996. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (January 2015), p. 8. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (January 2015), p. 1. Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated, and the qualifying conviction occurred after August 22, 1996, or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2. The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution (which is defined as actual, constructive, or attempted delivery) of a controlled substance. 21 USC 862a(a); 21 USC 802(8) and (11). The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2).

The Department presented documentation including two Judgments of Sentence from the Muskegon County Circuit Court detailing Respondent's criminal history. According to the records provided, Respondent had two drug-related felony convictions after August 22, 1996. Her first conviction was on ██████ 2008, for Controlled Substance-delivery or manufacturing of a schedule 1 or schedule 2 drug less than 50 grams. In the second case, the Respondent was convicted of the same offense on ██████ 2008. The cited statutory grounds for each set of convictions in the documents presented establish that Respondent had two felony drug convictions. Each conviction has possession, use, or distribution of a controlled substance as an element.

In support of its contention that Respondent committed an IPV, the Department presented four Applications signed and submitted by the Respondent on November 18, 2014; April 27, 2016; September 6, 2016; and February 21, 2017, on which Respondent indicated that she did not have any felony drug convictions or that she only had one. The Department also submitted a Redetermination from March 12, 2015, again where Respondent indicated she had only one felony drug conviction. The Applications and Redetermination clearly instructed Respondent to provide true and complete information, as well as the penalties for failing to do so.

Respondent did not truthfully identify her drug-related felony convictions on the Application for benefits despite having already incurred two felony drug convictions at the time of her first Application. The Department's evidence establishes by clear and convincing evidence that Respondent was advised of her responsibility to accurately report her circumstances, and that Respondent intentionally withheld information that if

properly disclosed, would have made her ineligible for FAP benefits. Under these circumstances, the Department has established by clear and convincing evidence that Respondent committed an IPV of the FAP.

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 March 2015 through May 2017, and that due to her drug-related felony convictions, she was personally ineligible for FAP benefits during this period. As a result, her group was eligible for a reduced FAP benefit. A review of the Respondent's Benefit Summary Inquiry presented by the Department supports benefits issued in the amount of \$ [REDACTED] (Exhibit A, pp. 126-131.) As discussed above, Respondent was ineligible for FAP benefits as she was subject to a permanent disqualification from the FAP. Respondent had several members of her FAP group and the group size fluctuated from month to month. Therefore, the Department submitted OI budgets for each month of the fraud period and was supposed to have only removed one group member from each month to recalculate the FAP budget.

The OI budgets were correctly calculated for March 2015, May 2015, July 2015 through March 2016, May 2016 through August 2016, and October 2016 through May 2017. The OI budgets April 2015, June 2015, April 2016, and September 2016 all have some discrepancies.

The April 2015, April 2016, and September 2016 OI budgets as presented by the Department show that the Respondent is now entitled to more benefits than she previously received. For April 2016, the reason for the error is clear; Respondent received a partial benefit based on her application date of April 27, 2016, but the Department failed to consider the prorated benefit based upon her application date in this month. The same is true for September 2016 based upon an application date of

September 6, 2016. In April 2015, while the reason would appear to be the same because Respondent had no income, there is no application in the record to show that Respondent submitted an application in April 2015; however, the Benefit Summary Inquiry shows that benefits were initialized on April 16, 2015, suggesting an application date closer to the middle of the month. These errors are favorable to the Respondent, and the Department has had the opportunity to correctly calculate the budgets; therefore, no modifications will be made to these months.

In June of 2015, the Department budgeted income for Respondent in the OI calculation. However, based upon the Benefit Summary Inquiry, Respondent was given a benefit for this month based on what appears to be zero income since she was provided the full benefit rate of \$ [REDACTED] for a group size of two. After removal of one person from the group with zero income, the benefit would be \$ [REDACTED]. But instead, the Department budgeted income that does not appear to have been present before, showing a previous benefit issuance of \$ [REDACTED] and a corrected benefit amount of \$ [REDACTED]. It is unclear where the Department's error occurred in this month; therefore, the OI of \$ [REDACTED] as calculated by the Department for June 2015 is removed from the total OI.

After a review of all of the evidence, the Department has established by a preponderance of the evidence that Respondent received an OI of benefits totaling \$ [REDACTED] for the period from March 2015 through May 2017.

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 March 2015 through May 2017, 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

Lynne Greening
MDHHS-Muskegon-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

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MAHS