



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: July 24, 2018
MAHS Docket No.: 18-001991
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 18, 2018, from Detroit, Michigan. The Department was represented by Patrick Cousineau, 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 (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 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 March 1, 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 changes in circumstances including changes in employment and income.
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 fraud period one is May 1, 2009, through December 31, 2009; and time period it is considering fraud period two is February 1, 2013, through February 28, 2014, (fraud periods).
7. During fraud period one, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,328.00.
9. During fraud period two, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
11. The Department alleges that Respondent received a total OI for both fraud periods in the amount of \$ [REDACTED]
12. This was Respondent's **first** alleged IPV.
13. 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 (January 2017), pp. 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 2017), pp. 6-7; 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 to establish an IPV due to the Respondent's failure to report income from employment during two periods with different employers. The first period indicates that the Respondent filed an application for FAP benefits on February 17, 2009, and reported no income. (Exhibit A.) The Department also presented a copy of the Work Number, which established that Respondent was employed with [REDACTED] from March 18, 2009, to December 11, 2009, and received his first pay March 27, 2009, which was never reported to the Department. (Exhibit A, pp. 30-31.) The employment started one month after the application was filed by Respondent and never reported. The Respondent indicated that he was not employed on the application which was apparently correct but failed to report employment and income thereafter at any time. The application completed by Respondent also certified that he received the Information Booklet explaining "Things You Must Do," and "Important Things To Know," thus, establishing that Respondent was aware of his rights and responsibilities. In addition, the Notice of Eligibility sent to Respondent on February 17, 2009, indicated that FAP benefits were based upon Respondent having no income and reminded Respondent that he was required to report all changes within 10 days. (Exhibit A, p. 28.)

The Department also seeks to establish an IPV for another period involving a different employer, [REDACTED]. The Department received a verification from employment from [REDACTED] wherein the employer that Respondent had been employed with them beginning December 12, 2012. The employer's verification was provided on June 16, 2016. (Exhibit A, pp. 33-36.) The Department was unable to locate a redetermination for the period of this employment, and the actual case comment referenced in the recoupment specialist's comments that no income was reported was not presented; and no FAP redetermination was located. Thus, the Department found that this period was due to agency error. (Exhibit A, p. 37.) Based upon these notes, the Department did not establish an IPV due to failure to report income or employment, and thus, did not establish an IPV by clear and convincing evidence.

Department policy requires that Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (December 1, 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11. As regards the first period of failure to report employment and income, the Department has established 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 is Respondent's first IPV, a disqualification of 12 months due to IPV of FAP being established is imposed.

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.

A client error is present in this situation for the [REDACTED] employment because Respondent failed to notify the Department of his employment and earned income. In regard to policy, the evidence established that Respondent did not report the income changes within 10 days of receiving the first payment reflecting the change nor at any other time. BAM 105, p. 9. Thus, an OI is present in this case.

As regards the overissuance regarding the ██████ Plastics employment, the case notes prepared by the recoupment specialist indicate that the OI for this period was due to Agency Error because no redetermination or other information could be found to establish that Respondent improperly reported. (Exhibit A, p. 37.)

Regardless of whether the error is due to the client or the agency, the Department is still entitled to seek recoupment of an overissuance if more benefits were received by the recipient than they were entitled to receive. The only difference is that when calculating an overissuance due to agency error the Department must reduce the earned income by the 20% earned income credit which it did in this case which serves to reduce the earned income. See Exhibit A, p. 60, budget for February 2013, for agency error.

Applying the overissuance period standard, it is found that the Department did apply the appropriate OI begin dates for each of the overissuance periods, of May 1, 2009, (first OI period) and February 1, 2013, for the second OI period.

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, (May 1, 2014), p. 7.

For the period May 1, 2009, through December 31, 2009, Respondent received an OI of \$█████ in FAP that the evidence established the Respondent was overissued. The Department presented overissuance budgets and benefits summary to establish the overissuance and that benefits were received by Respondent. The budgets for this period were reviewed and are determined to be correct.

For the period February 1, 2013, through February 28, 2014, the Respondent received an OI of \$█████ in FAP benefits that the evidence established the Respondent was overissued. The Department presented overissuance budgets and benefits summary to establish the overissuance and that benefits were received by Respondent. The budgets for this period were reviewed and are determined to be correct.

The Department presented OI budgets that were reviewed and which demonstrated that the Respondent was overissued FAP when the earned income from employment was included in the FAP calculation. Respondent received more FAP benefits than Respondent was entitled to receive because the original FAP benefit amount was based upon the Respondent reporting no income from employment; and thus, the FAP benefits were not calculated based on the Respondent's earnings from employment. Based upon the evidence presented, the Department has established that it is entitled to recoup a total of \$█████ of FAP benefits that Department is entitled to collect/ recoup.

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 **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

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 receiving FAP for a period of **12 months**.

LMF/

**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

Petitioner

MDHHS-OIG-Hearings

DHHS

Randa Chenault
MDHHS-Oakland-3-Hearings

Respondent

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

M Shumaker
Policy Recoupment
L M Ferris
MAHS