



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: November 9, 2018
MAHS Docket No.: 18-000629-REH
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, an in-person hearing was held on September 12, 2018, from Lansing, Michigan. The Department was represented by Chris Tetloff, #151, Regulation Agent of the Office of Inspector General (OIG). Respondent was represented by himself.

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 1 year?

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 19, 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. Department Exhibit 1, pg. 50.
4. On the Online Assistance Application, DHS 1171, submitted by Respondent on [REDACTED], 2016, Respondent reported that he had no earned income from employment. Department Exhibit 1, pgs. 12-25.
5. On June 8, 2016, the Department Caseworker sent Respondent a Notice of Case Action, DHS 1605, that informed him of his change reporting requirements as well as the Department was not budgeting any earned income for Respondent in determining his FAP eligibility. Department Exhibit 1, pgs. 26-31.
6. Respondent was aware of the responsibility to report changes in household income of his earned income from employment at the Food Depot on July 22, 2016, with a first paycheck received of July 28, 2016. Department Exhibit 1, pgs. 35-59.
7. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2016, through March 31, 2017 (fraud period).
9. During the fraud period, Respondent was issued \$1,358.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$134.00 in such benefits during this time period. Department Exhibit 1, pgs. 61-75.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,224.00.
11. This was Respondent's first alleged IPV.
12. 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 Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services

Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Effective January 1, 2016, 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 or more, or
 - the total amount is less than \$500, 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 (1/1/16), 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; BAM 720.

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, (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.

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; BEM 708. 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708. 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.

Overissuance

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

During the hearing, the OIG Agent stated that Respondent did not report his earned income to the Department until February 10, 2017, as reflected in the case comments. In the voice mail that Respondent left, he stated that he had left several detailed messages about his new job and address to his previous worker. However, there were no case comments since June of 2016. The Department Caseworker properly processed the new job and address change. Department Exhibit 1, pgs. 32-34.

Respondent stated, during the hearing, that he had called his worker in August about the 10th of the month to report his new job. He called again in two weeks and left another message but does not have the exact date documented on his calendar. Respondent called again on October 14, 2016, to give a change of address and left another message to the old Department Caseworker. He was never contacted about his reported new job and the earned income. Respondent continued to receive FAP benefits that he continued to use. He called again on February 9, 2017, and left a message with his new Department Caseworker about his earned income and change of address was processed. The Respondent had a calendar from 2016 and 2017 that he was referring to with his hand written notes on the dates.


This Administrative Law Judge finds Respondent credible that he did call to report the new job and earned income. As a result, Respondent did not commit an IPV, but did receive an overissuance of FAP benefits that the Department is required to recoup. However, Respondent is eligible for earned income deduction because he did report timely. As a result, the Department has to redetermine FAP eligibility using the earned income deduction in the budgets for the contested time period to determine the FAP overissuance.

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 not established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. The Department is ordered to redetermine the amount of the FAP overissuance based on the required earned income deduction.
3. Respondent did receive an OI of program benefits from the FAP program.
4. The Department is ORDERED to initiate recoupment procedures for the amount of the FAP overissuance in accordance with Department policy.

CF/dh



Carmen G. Fahie
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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Saginaw County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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