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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 6, 2018
MAHS Docket No.: 18-000671
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 July 2, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], 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 Food Assistance (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 23, 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 report accurately and correctly information to the Department including income, persons residing in the home and employment.
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 November 1, 2016 through October 31, 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 Services 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), 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 (October 2016), p. 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 alleges that Respondent committed an IPV of her FAP benefits because she failed to report her employment wages from the Walmart on her redeterminations while employed with [REDACTED] and failed to report that the father of her child [REDACTED] was living in the Respondent's home and was a member of the group and failed to report his income from employment with [REDACTED] to the Department.

Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105 (January 2018), pp. 9-10. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 9.

Other changes must be reported within 10 days after the client is aware of them. These include, but are **not** limited to, changes in:

- Persons in the home.
- Marital status.
- Address and shelter cost changes that result from the move.
- Vehicles.
- Assets.
- Child support expenses paid.
- Health or hospital coverage and premiums.
- Child care needs or providers. BAM 105, p. 12.

As evidence supporting an IPV, the Department presented Respondent's redetermination where she failed to report that she was working for [REDACTED] dated August 1, 2016 and reported the only source of income was child support for her two children. The August 29, 2017 redetermination (second redetermination) also lists a new child in the household with a birth date of [REDACTED] with a last name of [REDACTED]. Exhibit A, pp. 52, 56. The second redetermination dated August 29, 2017 provided by the Department at the hearing was incomplete and had missing pages but lists the [REDACTED] address as the current address. In an earlier application filed on September 2, 2014, the Respondent did report employment with [REDACTED] but did not report her employment or income from employment on the either redetermination completed in 2016 or 2017. Exhibit A, pp. 12-58. The address on the 2017 redetermination was listed as [REDACTED] 48708. Exhibit A, p. 55. The address on the first redetermination August 2, 2016 was not the [REDACTED] address and notes Respondent recently moved and pays [REDACTED] rent but does not list a new address. Exhibit A, p.53.

The earliest time the Department has established that Respondent was residing at the [REDACTED] address was the August 29, 2017 redetermination sent to the Respondent on July 5, 2017. The Department did not establish an earlier date for Respondent at that residence and did not present a verification of rent, a change of address or landlord document filed with the Department to establish that Respondent was at the address earlier than July 5, 2017. In its investigation report the Department states that [REDACTED] shows that the Respondent and [REDACTED] are at the same address, however no such record was presented as evidence. Exhibit A, p. 4. The Investigation Report further states that [REDACTED] signed a document stating that Respondent was residing at [REDACTED] and pays [REDACTED] in rent, however no such documentation was presented as evidence. Exhibit A, p. 4.

Although the Department established that [REDACTED] was associated with the [REDACTED] address beginning 2011 and lists the address on his driver's license, and car registrations the Department has not established a date when the Respondent moved to that address requiring her to change her address and report that they were residing in the home together and report his income to the Department.

A birth of the child with the same last name who residing at the address in July 5, 2017 does establish that Respondent was living at the [REDACTED] address however, the evidence provided at the hearing does not establish when she may have first resided at the Davenport address.

In addition, [REDACTED] employer completed payroll information as well as W2's for 2011, 2012, 2013, and 2014 listing the [REDACTED], Bay City address. Exhibit A, p. 75-78. The Employer also provided a schedule of pays for 2015, 2016 and 2017. Exhibit A, pp. 79-84.

In support of its contention that Respondent failed to report that the [REDACTED] was in her household and to establish where he lived the Department presented a driver's license registration dated October 16, 2017 indicating an address of [REDACTED], [REDACTED], Michigan, 48708. Exhibit A, p. 112. In addition, the Department provided two car registrations for [REDACTED] at the [REDACTED] address in October 2017. Exhibit A, p. 113-114.

Based on the foregoing information and evidence, the Department has established that the Respondent failed to report her employment to the Department on both redeterminations she completed at which time she continued to work for [REDACTED] and receive income. In addition, the Respondent had a child on September 26, 2016 with the last name of [REDACTED]. A new address was shown on the second redetermination for [REDACTED] as of July 5, 2017. The Department presented no evidence other than the redetermination to establish when Respondent reported a change of address and no confirmation of when the change was reported except that it was listed on the second redetermination dated July 5, 2017 filed by her on August 29, 2017.

Clearly the Respondent failed to report her [REDACTED] income and employment on both redeterminations and thus an IPV is established on that basis by clear and convincing evidence. As regards the August 29, 2017 redetermination and Respondent's failure to report that [REDACTED] was in the home and report his income based upon the evidence presented an IPV is established on that basis as well as [REDACTED] lists the address as his address and would also be a mandatory group member because the Respondent's child born on [REDACTED] also has his last name as well as his use of the address with his employer since 2011 and his driver's license and car registrations at that address.

Thus, based upon the evidence presented the Department has demonstrated by clear and convincing evidence that Respondent intentionally withheld and failed to report her earned income to the Department on two redeterminations and failed to report that [REDACTED], the father of her child was residing in the household and that he had income from employment as of the July 5, 2017 redetermination. Thus, the Department has established an IPV of FAP benefits was committed by Respondent 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. 15; BEM 708 (October 2016), p. 1. 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. 16. 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, p. 1. 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 concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16. As this is Respondent's first IPV, the Department is entitled to a finding of a one year disqualification of Respondent from receipt of FAP benefits.

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 because Respondent failed to notify the Department of her earned income. In regards to policy, the evidence established that Respondent did not report the income received from her employer [REDACTED]. BAM 105, p. 9. Thus, an OI is present in this case.

Applying the overissuance period standard, it is found that the Department applied the appropriate OI begin date of for the OI caused by Respondent's failure to report her income beginning with the first redetermination dated August 1, 2016. [BAM 715, pp. 4-5 and Exhibit A, p. 4 and 52.]

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In this case, the Department presented OI budgets from November 2016 through October 31, 2017. [Exhibit A, pp. 85-110] The budgets beginning November 2016 through June 2017 must be recalculated to include the Respondent's income only. The budgets as presented for those months are incorrect because they include the income for [REDACTED] which the Department has not established was living with Respondent for those months as discussed above.

The Department did establish that as of the July 2017 redetermination which listed [REDACTED] [REDACTED] address as the Respondent's residence that they were in the same household and thus his presence and income should have been reported. The budgets presented for the 4 month period July 2017 through October 2017 include the unreported income for both Respondent and [REDACTED] and have been reviewed and are correct as presented and establish an OI for that period of [REDACTED]. Exhibit a, pp. 85 and 86 – 93.

Thus, the Department has established an OI of [REDACTED] for the period July 2017 through October 2017 which the Department is entitled to recoup/collect.

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] for the period July 2017 through October 2017 from the following program(s) Food Assistance.
3. The Department did not establish the correct OI amount for the period November 2016 through June 30, 2017, but did establish that Respondent did receive more FAP benefits than she was entitled to due to her failure to report her income and must recalculate the OI budgets based Respondent's income only for the period November 2016 through June 30, 2017 and re determine the correct overissuance amount.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy.

The Department is ORDERED TO recalculate the correct OI amount in accordance with Department policy for the period November 2016 through June 30, 2017 based upon Respondent's income and send the Respondent a Notice of Overissuance. The Respondent shall have a right to request a hearing regarding the OI establishment in accordance with Department policy.

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

LF/cg



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

Via Email:

MDHHS-Bay-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]