



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: August 7, 2018
MAHS Docket No.: 18-000687
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 June 18, 2018, from Detroit, Michigan. The Department was represented by Allyson Carneal, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself.

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 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 income and employment and changes in employment.
5. Respondent **had** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. The Respondent attended special education classes, has a learning disability and indicated that she has an 8th grade education and has difficulty spelling. She had her ■-year-old son assist with completing an application for FAP in July of 2013.
6. The Department's OIG indicates that the time period it is considering the fraud period is September 2014 through June 30, 2015, (fraud period).
7. During the fraud period, Respondent was issued \$ ■ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ ■ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ ■
9. This was Respondent's **first** alleged IPV.

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, it is clear that Respondent [REDACTED] failed to report that she was working for [REDACTED] on her Redetermination. The Redetermination was signed by Respondent and submitted to the Department on June 10, 2014; and most sections are not completed, including the Income Source Section, which is blank with a typed-in note that she gets income from chore service work. The Department would have reviewed the Redetermination for FAP and would have conducted an interview with the Respondent, but there is no record of an interview where Respondent was asked about her employment. There was a record that Respondent was able to report changes in address by phone; however, there are no case notes that indicate that the Respondent was asked and misinformed the Department about her employment.

At the hearing, the Respondent credibly testified that she was learning disabled and often signed the forms sent to her so that she did not feel stupid. In addition, she reported that she attended special education classes due to the fact that she was learning disabled and has difficulty spelling. An application submitted by Respondent in 2013 was completed by her [REDACTED]-year-old son, which she signed. As such, it is determined that given her learning disability and an 8th grade education, the Respondent did not intentionally fail to complete the redetermination correctly and should have advised her caseworker by phone. As discussed at the hearing, the Respondent is required and must in the future seek assistance from the Department when completing paperwork so that the Department is correctly informed about all information including income, employment, group size and changes of any kind affecting her benefits.

However, based upon the evidence provided, it is determined that the Department has not 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. 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

A client 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 employment with [REDACTED] 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 or at any other time. 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 September 1, 2014, having received her first check August 1, 2014. (BAM 715, pp. 4-5 and Exhibit A, pp. 27-29.)

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 September 1, 2014, through June 30, 2015, the Department alleged that Respondent received an OI of \$ [REDACTED] in FAP that the evidence established the Respondent was overissued. (Exhibit A, pp. 5.) (See also budgets for overissuance Exhibit A, p. 52.) The Department, however, did not properly determine the OI period in accordance with granting time for reporting and processing before beginning the OI period. See BAM 105, and BAM 220 (OI begin date) and BAM 715 (client error, computing earned income), (July 1, 2017), p. 8. The OI period when the 10-10-12, 32-day period is calculated, results in the fraud period for OI beginning on October 1, 2014, based upon, (August 1, 2014, first check received plus 32 days, equals September 1, 2014) so the OI start month must be October 1, 2014. Given this error, the OI must be reduced by the September 2014 OI of \$ [REDACTED] resulting in a corrected OI amount of \$ [REDACTED] (Exhibit A, p. 52.)

The Department presented OI budgets that were reviewed and which demonstrated that the Respondent was overissued FAP when the earned income from employment from [REDACTED] was included in the FAP calculation. (Exhibit A, pp. 52-72.) Respondent received more FAP benefits than Respondent was entitled to receive because the original FAP benefit amount was based upon the Respondent's reporting and the Department including only income from chore services and was not calculated based on the Respondent's earnings from [REDACTED] employment. A review of the OI budgets at the hearing and further review by the undersigned found them to be correct. The Department also presented a Benefit Issuance Summary Inquiry to establish that Respondent received FAP benefits throughout the OI period. (Exhibit A, p. 51.) Based

upon the evidence presented, the Department has established that it is entitled to recoup a total of \$ [REDACTED] for the FAP benefit OI.

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 committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) Food Assistance.

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

LF/



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

DHHS

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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L M Ferris
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