STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

[redacted], MI [redacted]

Date Mailed: September 5, 2018
MAHS Docket No.: 18-003639
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 August 10, 2018, from Lansing, Michigan. The Department was represented by Jason Rupp, 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).

Respondent's Exhibits 1-84 were admitted as evidence.

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 April 10, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has not requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of $3,894.00 in FAP benefits issued by the Department.

4. Respondent was aware of the responsibility to report changes in circumstances.

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 June 1, 2016, through November 30, 2016 (fraud period).

7. During the fraud period, Respondent was issued $3,894.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $2,172.00 in such benefits during this time period.

8. The Department alleges that Respondent received an OI in FAP benefits in the amount of $1,722.00.

9. This was Respondent's second 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 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, pp 12-13 (1/1/2016) (Emphasis added).

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, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016).

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; 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, p 2. 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 (4/1/2016). 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.

This was Respondent's second instance of an IPV. Therefore, a 24-month disqualification is required.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

Respondent acknowledged her rights and responsibilities by signing the MiBridges Assistance Application, dated [redacted], 2013. Respondent was provided with a DHS 1605, Notice of Case Action, dated March 2, 2016. This document identified the information provided by Respondent to the Department to determine her eligibility. On page 2, Budget Summary, no income is listed as none was reported to the Department. The document also, identifies Respondent as a change reporter and provides her with details as to her responsibility to report all change in circumstances to the Department within 10 days of occurrence.

Respondent was provided with a DHS 1605, Notice of Case Action, dated August 1, 2016. This document identified the information provided by [redacted] to the Department to determine her eligibility. On page 2, Budget Summary, her reported earned income from [redacted] LLC is the only income listed. The document also, identifies Respondent as a change reporter and provides her with details as to her responsibility to report all change in circumstances to the Department within 10 days of occurrence.

A DHS 38, Wage Match, dated November 2, 2016, documents [redacted] employment history with [redacted] Inc. [redacted] began on approximately April 11, 2016 and received his first paycheck on April 22, 2016, for working 39.5 hours of the week ending April 17, 2016. Also included, were [redacted] hours worked, wages earned, and pay dates for the time period of April 22, 2016, through October 14, 2016.

An EQUIFAX Inquiry regarding [redacted] employment with [redacted], Inc. confirmed that he started working on April 11, 2016. Included was a detailed summary

of his hours worked, wages earned, and dates of pay for the time period of May 20, 2014, through November 25, 2016. This is Respondent's Second IPV.

DECISION AND ORDER

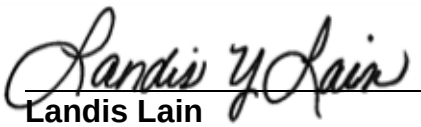
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did receive an OI of FAP benefits in the amount of $1,722.00.

The Department is ORDERED to initiate recoupment procedures for the amount of $1,722.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for the requested twenty-four months, in accordance with Department policy.



LL/bb

Landis Lain
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

Lacey Whitford
1919 Parkland Drive
Mt. Pleasant, MI 48858

Isabella County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[redacted], MI [redacted]