



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: August 13, 2018

MAHS Docket No.: 18-004291

Agency No.: [REDACTED]

Petitioner: OIG

Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 19, 2018, from Detroit, Michigan. The Department was represented by Adrian Laugavitz, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving benefits for the Food Assistance Program (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 20, 2018, to establish an IPV committed by Respondent.
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 changes in circumstances to the Department.
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 periods it is considering the fraud period are December 2015, and June 2016 through September 2016 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department indicates that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department previously established that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] therefore, the Department is only seeking a disqualification in this case.
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 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 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

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 (January 2018), p. 8; 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 intentionally failed to timely inform the Department about employment income from [REDACTED] (Employer 1), [REDACTED] (Employer 2), and [REDACTED] (Employer 3), resulting in an OI of benefits and IPV of the FAP. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 556 (July 2013), pp. 2-7. FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 10.

Respondent was informed of the responsibility to notify the Department of changes in circumstances through his Application dated March 31, 2015, his Semi-Annual Contact Report, his Notice of Case Action dated March 2, 2016, giving him a simplified reporting status, and his Semi-Annual Contact Report dated August 1, 2016.

On June 30, 2016, Respondent began employment with Employer 1. He received his first paycheck on July 14, 2016; and seven days later, he received the Notice of Case Action. Despite being notified of the responsibility to alert the Department to changes in employment or income, Respondent never informed the Department of his employment. The Department only became aware of Respondent's employment due to a Wage Match and subsequent verification with the Work Number Report. A Work Number Report is a tool utilized by the Department through which employers can voluntarily provide employment-related information about its employees to other entities, such as the Department. Respondent reported his loss of employment with Innovative Lifestyles (Employer 4) on the August 2015 Semi-Annual Contact Report but then failed to timely report the start of his employment on or about October 6, 2015 with Employer 1. Respondent did not report this employment until he submitted his Redetermination on February 3, 2016. In consideration of his new employment, the Department allowed Respondent to have simplified reporter status. This status allowed Respondent to have flexibility in his earnings without having to report each change. The status also meant that he would only have to report a change if his income exceeded the simplified reporting limit of \$1,726.00. Respondent did not report any changes in his circumstances until August 2016 through his Semi-Annual Contact Report where he only reported a change in income of greater than \$100.00, but provided no other information. After this admission, the Department discovered employment with Employer 2, beginning March 7, 2016, and Employer 3, beginning May 26, 2015. It is notable that Respondent's employment with Employer 2 began five days after the Department issued a Notice of Case Action informing him of the simplified reporting limit. As a result of Respondent's employment with Employer 1 and Employer 2, his income exceeded the simplified reporting limit as of April 2016, not even a full month after he was made aware of the reporting limit.

Respondent was clearly informed of his obligation to report changes in circumstances to the Department upon his initial application. He was also informed about his obligation to report changes in income beyond the simplified reporting limit. Despite this knowledge, Respondent did not timely report his employment as required. The Department's evidence establishes that Respondent intentionally withheld information from the Department in order to maintain his FAP benefits. Therefore, the Department established by clear and convincing evidence that Respondent committed an IPV.

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. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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. This was Respondent's first IPV. Therefore, he is subject to a one-year disqualification under the FAP.

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.

It is ORDERED that Respondent be disqualified from the FAP for a period of **12 months**.

AMTM/



Amanda M. T. Marler

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

Mark Epps
MDHHS-Genesee-6-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

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