



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 18, 2018
MAHS Docket No.: 18-005422
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 23, 2018, from Lansing, Michigan. Respondent personally appeared and testified.

The Department was represented by Craig Curtiss, Regulation Agent of the Office of Inspector General (OIG). Mr. Curtiss testified on behalf of the Department. The Department submitted 77 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

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 FAP benefits for one 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 May 14, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits. [Dept. Exh. 1, 4].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 69-70, 75].
4. Respondent was aware of the responsibility to report all members of her household, to include her husband, as indicated by her signature on her Assistance Application, dated [REDACTED], 2016. [Dept. Exh. 31].
5. On June 27, 2016, Respondent submitted a redetermination. The instructions note to "[a]dd names and information about people living with you who do not appear on this form." Respondent answered that the members of her household had not changed and were the same. In answering the question, "Does anyone in your household have income?" Respondent answered, "None." Respondent also reported a new mailing address of [REDACTED]. [Dept. Exh. 36-41].
6. On June 9, 2016, Respondent's husband, [REDACTED], residing at [REDACTED], submitted his redetermination. Under the category of members of household, Mr. [REDACTED] only listed himself. Mr. [REDACTED] indicated that he was homeless at the end of the redetermination. [Dept. Exh. 42-47].
7. For the pay periods ending July 31, 2016; August 7, 2016 and August 28, 2016, Mr. [REDACTED] had earned income from [REDACTED] as indicated by the Work Number. [Dept. Exh. 65-68].
8. On November 28, 2016, Respondent's husband, [REDACTED] [REDACTED] submitted a redetermination to the Department. Mr. [REDACTED] was residing at the same address and listed only himself as a member of the household. [Dept. Exh. 48-55].
9. On January 20, 2017, Respondent submitted a redetermination, listing her address as [REDACTED]. She also indicated there was "no change," under members of household and only listed herself and her two daughters. Under "income source," Respondent only listed the receipt of her food stamps. [Dept. Exh. 56-63].
10. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 20].

11. Respondent testified in the above-captioned case that she was living with her husband, but that they were not living together as husband and wife. [Testimony of ██████████].
12. The Department's OIG indicates that the time period it is considering the fraud period is June 1, 2016 through March 31, 2017 (fraud period). [Dept. Exh. 4].
13. During the fraud period, Respondent was issued \$6,490.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$5,987.00 in such benefits during this time period. [Dept. Exh. 4].
14. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$503.00. [Dept. Exh. 4].
15. 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, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or

- The total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program 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 (10/1/2017).

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 720, p 1 (emphasis in original).

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 273.16(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 established by clear and convincing evidence, that Respondent moved in with her husband, [REDACTED], and listed his address as her mailing address, without listing him as a part of her household or listing his income, resulting in Respondent maintaining her FAP benefits.

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. 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.

In this case, Respondent is disqualified from receiving FAP benefits for one year based on her first IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

In the above captioned matter, the Department has established that Respondent intentionally did not list her husband as a member of her household to maintain her FAP benefits. Based on the omission of a household member by Respondent, she received \$6,490.00 in FAP benefits when she was only entitled to \$5,987.00, resulting in a \$503.00 overissuance which the Department is entitled to recoup.

DECISION AND ORDER

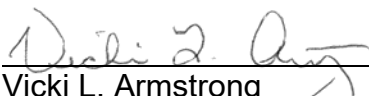
Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, this Administrative Law Judge concludes that:

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 \$503.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$503.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for a period of one year.

VLA/nr



Vicki L. Armstrong
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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Kent County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]