



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: November 27, 2018
MAHS Docket No.: 18-006548
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 September 13, 2018, from Detroit, Michigan. The Department was represented by Gary Shuk, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself.

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 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 June 26, 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 changes in circumstances including reporting starting employment, and stopping employment and receipt of income from 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 March 1, 2013, through June 20, 2013, (fraud period).
7. The Department has established the debt and OI and is only seeking an IPV for alleged failure to report employment and employment income. (Exhibit A, p. 34.)
8. 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 (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 273.16(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 seeks an IPV due to the Respondent's alleged failure to report her initial starting of employment and her stopping employment and failure to report the income received from [REDACTED] her employer. 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. 1-6; 7 CFR 273.9(a). 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 (July 2015), p. 10; 7 CFR 273.10(b)(1)(i).

Respondent was informed of the responsibility to notify the Department of changes in circumstances within 10 days of the change itself through her application dated August 23, 2010. (Exhibit A, pp. 10-25.)

The Respondent completed a Redetermination, due June 28, 2013. The Respondent timely filed the Redetermination; and in answer to the question regarding income, and the question whether she had stopped working within the last 30 days, the Respondent answered "no". (Exhibit A, pp. 30-33.) As part of its evidence, the Department presented the Work Number regarding the Respondent's employment history and specifically, [REDACTED]. The Work Number indicated that the Respondent began employment with [REDACTED] on January 18, 2013, and stopped working June 21, 2013, and received her last check on June 28, 2013, the same day she completed the Redetermination. (Exhibit A, p. 29.) The Respondent never reported starting employment; and thus, her income from employment was not reported to the Department. In addition, the Respondent did not report that she stopped her employment on June 21, 2013, and did not report any income for the last 30 days at the time she filed the Redetermination.

The Respondent, for her part, said she was having mental problems in August 2012 and was diagnosed with PTSD due to a traumatic event and consequently did not understand the questions and did not answer the questions properly. The OIG agent, who was the Department's representative at the hearing, pointed out that Respondent worked consistently for six months for close to 40 hours weekly and thus, could not have been as significantly impaired as she claimed. The questions on the Redetermination are very straight forward and simple; and thus, it is determined that the Respondent's claim of inability to understand due to her mental impairment for PTSD was not so severe that it interfered with her ability to answer the questions appropriately or seek assistance in answering the questions. The Respondent's mental impairment did not appear significant enough to keep her from working; and therefore, it is determined that she capable of understanding and answering the simple questions asked of her on the Redetermination. The evidence presented did not support a finding that Respondent's mental impairment would limit her understanding or ability to fulfill this requirement, i.e., reporting that she stopped working or reporting that she got paid on June 21, 2013.

Respondent never reported her employment to the Department and then completed the Redetermination giving answers that were obviously incorrect so as not to incur any repercussions that would affect her continuing to receive FAP benefits. The Department's evidence establishes that Respondent intentionally withheld information about her changes in circumstances in order to maintain her FAP benefits. Her failure to report her circumstances resulted in a greater FAP benefit than she was entitled to

receive. 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, she is subject to a one-year disqualification under the FAP.

Overissuance

In this case, the Department has already established a debt, and thus no determination of an overissuance is required to be made.

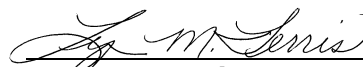
DECISION AND ORDER

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.

The Department is ORDERED to enter a disqualification of the Respondent from the Food Assistance Program for a period of **12 months**.

LMF/



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

Lindsay Miller
MDHHS-Genesee-UnionSt-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
L M Ferris
MAHS