



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: November 28, 2018
MAHS Docket No.: 18-007875
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 November 14, 2018, from Detroit, Michigan. The Department was represented by Julie Price, 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 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 the 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 July 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 the FAP benefits issued by the Department.
4. Respondent **was** informed of the responsibility to report changes in household circumstances including changes in income 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 periods it is considering the fraud period are January 2016 through February 2016, and June 2016 through April 2017 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
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 273.16(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 alleges that Respondent intentionally failed to report his employment income from [REDACTED] (Employer 1) and [REDACTED] (Employer 2). 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 his applications dated February 27, 2015, and January 2, 2016.

Once the Department became aware of Respondent's employment, the Department requested employment verification from Employer 1 and used a WorkNumber Report for Employer 2. Employer 1 provided a Check History Report for Respondent which showed his first check was issued on November 25, 2015, was paid on a weekly basis, and continued to receive wages from Employer 1 until his last check on February 25, 2016. The Work Number Report is a report available to the Department, compiled by Equifax, which allows employers to voluntarily make employment related information available to third parties such as the Department. The WorkNumber Report for Employer 2 shows that Respondent began employment with them on April 8, 2016, and received his first paycheck on April 19, 2016. It also shows that he received a weekly paycheck until his last check on July 4, 2017.

Respondent was clearly informed of his obligation to report changes in circumstances to the Department. Despite this knowledge, Respondent never reported his employment with Employer 1 or Employer 2 to the Department. The Department's evidence establishes that Respondent intentionally withheld information about his changes in circumstances in order to maintain his FAP benefits. His failure to report his circumstances resulted in a greater FAP benefit than he 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; 7 CFR 273.16(b)(1) and (5). 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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged that Respondent was issued FAP benefits in the amount of \$[REDACTED] from January 2016 through February 2016 and June 2016 through April 2017, and that because of his unreported employment income, he was eligible for less FAP benefits than he received resulting in an OI of \$[REDACTED]. A review of the Respondent's Benefit Summary Inquiry presented by the Department supports benefits issued in the amount of \$[REDACTED] which includes a benefit for July 2016. (Exhibit A, pp. 61, 67, 68.)

To determine the first month of the OI period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715, p. 5. These rules apply each time a change occurs. Since Respondent received his first paycheck with Employer 1 on November 25, 2015, the Department properly applied the above rules and began the OI period on January 1, 2016, for the first portion of the OI. Then since Respondent began employment with Employer 2 on April 8, 2016, with his first paycheck on April 19, 2016, the Department properly began the OI in June 2016 for the second portion of the OI after application of the above rules.

The Department also presented OI budgets for each month of the OI period. In reviewing the budgets, the Department properly considered Respondent's income for January and February 2016. However, the Department did not properly calculate the OI because the Department failed to consider the FAP Net Income Limit of \$[REDACTED]. BEM 550 (October 2015), p. 1; RFT 250 (October 2015), p. 1. The Department's error results in a benefit to Respondent and the Department cannot be awarded a greater OI than that which was requested. Therefore, no change will be made to the total OI.

For June 2016, the Department provided two OI budgets. The first OI budget alleges income for Respondent which is not supported by the remainder of the Department's evidence. The second budget submitted by the Department is supported by evidence and will be the OI budget considered for this decision. While Respondent's income was again properly calculated, the Department repeated its previous error and failed to

consider the net income limit. The error will not be corrected for purposes of this decision as discussed above.

No OI budget was provided for July 2016 presumably because based upon the evidence presented, Respondent had no wages from July 2016. In addition, no OI was included in the summary of OI for each month.

In August 2016, the Department properly considered Respondent's income and calculated the adjusted FAP benefit rate of \$168 resulting in an OI of \$[REDACTED] RFT 260 (October 2015), p. 2.

In September, October, and December of 2016, as well as March and April of 2017, the Department again properly considered Respondent's income, but failed to consider the net income limit. RFT 250 (October 2015 and October 2016), p. 1. As discussed above, no changes will be made.

In November 2016, the Department considered a wage for Respondent for the pay date November 8, 2016, but did not provide any evidence to support a wage for this week. Since the Department failed to provide any evidence that Respondent received a wage for this pay date, the income as calculated by the Department is not supported by evidence. Therefore, the OI is not properly calculated and will not be considered as part of the total OI.

In January 2016, the Department properly considered Respondent's income and afforded him a \$[REDACTED] FAP benefit with an OI of \$[REDACTED] RFT 260, p. 9.

In February 2016, the Department properly considered Respondent's income and afforded him a benefit rate of \$[REDACTED] with an OI of \$[REDACTED]

Therefore, after removal of the November OI as discussed above, the total OI established by the Department is \$[REDACTED] based upon the Respondent's failure to report employment income. The Department may begin to recoup or collect \$[REDACTED] for the period January through February 2016, as well as June 2016 through April 2017.

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.
2. Respondent **received** an OI of program benefits in the amount of \$[REDACTED] from the FAP.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period January to February 2016, and June 2016 through April 2017, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from 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

Kimberly Reed
MDHHS-Montcalm-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

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