



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: December 17, 2018
MAHS Docket No.: 18-009521
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 28, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] 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) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent received \$3,347 in FAP benefits from May 1, 2016 to December 31, 2016 (fraud period) for a FAP group consisting of herself, her minor son [REDACTED] (Son) and minor daughter [REDACTED] (Daughter) (Exhibit A, pp. 52, 58, 66-67).
2. Respondent was aware of the responsibility to accurately report her household composition and did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement
3. On August 31, 2018, the Department's OIG filed a hearing request alleging that Son was not residing with Respondent during the fraud period and that Respondent committed an IPV by including him in her FAP group and received a FAP OI totaling \$1,232 because she received FAP benefits on Son's behalf that she was ineligible to receive.
4. Respondent has no prior IPV disqualifications.
5. 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 October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits in excess of \$500. BAM 720 (October 2017), p. 5. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c). For an IPV based on inaccurate reporting, Department policy requires that the individual also have been clearly and correctly instructed regarding his or her reporting responsibilities and have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. 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; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010)

In this case, the Department alleges that Respondent committed an IPV because she intentionally misrepresented her FAP group size by including Son, a minor child, as a household member even though Son's father had physical custody of Son. Parents and their children under 22 years of age who live together must be in the same FAP group. 7 CFR 273.1(b)(1)(ii); BEM 212 (October 2015), p. 1. When a child spends time with multiple caretakers who do not live together (such as joint physical custody), the child is in the FAP group of the primary caretaker. BEM 212, p. 3. The caretaker in whose home the child sleeps more than half the days each month, averaged over a twelve-month period, is the child's primary caretaker. BEM 212, pp. 3-4.

In support of its IPV case against Respondent, the Department presented (i) a redetermination Respondent submitted to the Department on April 4, 2016 including Son as part of her household (Exhibit A, p. 12); (ii) an application Respondent submitted to the Department on July 28, 2016 including Son as part of her household (Exhibit A, p. 22); (iii) a benefit summary inquiry showing that Respondent received \$3,347 in FAP benefits during the fraud period based on a three-person FAP group that included Son (Exhibit A, pp. 52, 58, 66-68); and (iv) a FAP OI summary showing the amount of FAP benefits Respondent would have been eligible to receive each month during the fraud period if her FAP group size was reduced from three to two (Exhibit A, p. 59).

None of this evidence shows that Son was not residing in Respondent's home as certified by Respondent. The only evidence presented by the Department in support of its assertion that Son was not living with Respondent was the OIG's statement that Respondent admitted in an interview conducted April 17, 2018 that "she did not have physical custody of both her boys in 2016." A party's statement against interest is admissible evidence. See MRE 801(d)(2); MRE 804(a)(5) and (B)(3). However, in this case, the statement was paraphrased and no context concerning the questions asked was provided. Thus, Respondent's statement does not clearly establish that she was not Son's primary caretaker as defined under policy during the fraud period. The Department stated Respondent refused to provide a written statement but failed to present any corroborating evidence to establish that Son was not in Respondent's household, such as a statement from Son's father, custody orders, or school, child care or medical provider records. See BEM 212, pp. 11, 12-13. In the absence of any corroborating evidence, the Department has failed to establish by clear and convincing evidence that Respondent misrepresented her household composition. Therefore, the Department has not established that Respondent committed an IPV.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification from FAP due to IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. 7 CFR 273.18(a)(2); 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. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

Because the Department failed to establish that Respondent only had two individuals in her household rather than three during the fraud period, there is no evidence to support the Department's position that Respondent was overissued FAP benefits. Accordingly, the Department is not entitled to recoup and/or collect the alleged \$1,232 FAP OI.

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 **not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did **not** receive an OI of FAP benefits in the amount of \$1,232.

The Department is ORDERED to delete the \$1,232 FAP OI, cease recoupment and/or collection procedures for the amount of \$1,232, and supplement Respondent for any amounts already collected and/or recouped.

AE/tm



Alice C. Elkin
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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: [REDACTED]
IPV-Recoupment Mailbox