[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: February 15, 2019
MAHS Docket No.: 18-012349
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 February 12, 2019, from Lansing, Michigan. The Department was represented by Brian Siegfried, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Respondent, [redacted].

Department Exhibit A pages 1-107 were admitted as evidence.

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 FAP benefits?

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 November 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 income and earnings.

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 July 1, 2017-August 31, 2017 (fraud period).

7. During the fraud period, Respondent was issued $921 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $138 in such benefits during this time period.

8. The Department alleges that Respondent received an OI in FAP benefits in the amount of $783.

9. 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 January 1, 2016, 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 or more, or

  - the total amount is less than $500, 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, pp 12-13 (1/1/2016)(Emphasis added).

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, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016).

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; 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.

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. CDC clients who intentionally violate CDC program rules are disqualified for six

months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

Clear and convincing proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

This Administrative Law Judge finds that Respondent failed to report all household members and all household income to DHHS. The client revealed during an interview she did not report [redacted] in the household because she knew her income would make them ineligible for benefits.

The FAP overissuance time period is July 1, 2017-August 31, 2017, and the FAP overissuance amount is $783.00. July 24, 2017, Bridges case information was reviewed showing that the client has a pending FAP case and a case residential address of [redacted], MI [redacted] July 24, 2017, the Work Number was reviewed, and it shows that [redacted] is currently employed and has been employed with [redacted] since September 9, 2014, and the address on record with [redacted] is [redacted], MI [redacted]

September 14, 2018 - the client's case file was reviewed. The client completed an Assistance Application on [redacted] 2017, and listed herself, [redacted] and [redacted] in the household. The client failed to list [redacted] in the household and her income to DHHS.

July 25, 2017 - a home call was conducted at [redacted] MI [redacted] and [redacted] and [redacted] were present. Agent Siegfried spoke briefly with Mr. [redacted] and he stated that [redacted] lived at this residence. Respondent stated that there is no income in the household since she stopped substitute teaching this spring. When asked if [redacted] lives at this address she stated yes. She then stated she didn't add [redacted] to the application because she knew [redacted] income would make them ineligible for benefits. She went on to say that [redacted] is supposed to help with the rent and other expenses, but she hasn't been paying anything. They are currently behind in their rent. [redacted] comes and goes. Her 2 children stay with [redacted]. The client stated that she hasn't seen [redacted] in two or three weeks.

October 9, 2018 - the client contacted me after she had received a repayment agreement. The allegation and overpayment was explained to the client. She stated she tried to use the Bridge Card, but it wouldn't work for her. It was explained to the client she had received food benefits and those benefits were used.

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it determined that Respondent failed to notify the Department of her earned income and when it determined that Respondent committed and Intentional Program Violation.

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, 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 $783.00.

The Department is ORDERED to initiate recoupment procedures for the amount of $783.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for the requested twelve months in accordance with Department policy.

LL/hb

Landis Lain
Administrative Law Judge
for Robert Gordon, 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	Michelle Morley 715 S Loxley Rd Houghton Lake, MI 48629 Roscommon County, DHHS Policy-Recoupment via electronic mail L. Bengel via electronic mail
Petitioner	OIG PO Box 30062 Lansing, MI 48909-7562
Respondent	[redacted] [redacted] [redacted], MI [redacted]