



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 15, 2018
MAHS Docket No.: 18-007214
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 October 24, 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 for twelve months?
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. The Department's OIG filed a hearing request on July 7, 2018, alleging a FAP OI of benefits received by Respondent as a result of Respondent committing 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 income.
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 October 1, 2014 to April 30, 2015 (fraud period).
7. During the fraud period, Respondent was issued \$1,358 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$48 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,310.
9. Respondent had no prior IPV disqualifications.
10. 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.

As of 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 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 (October 2017), pp. 12-13.

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.

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 committed an IPV concerning his FAP benefits because he intentionally withheld information concerning his employment income in order to receive or maintain FAP benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount. 7 CFR 273.9; 7 CFR 273.10(c); BEM 556 (July 2013), pp. 2-6. FAP recipients who are not simplified reporters are required to report starting employment. 7 CFR 273.12(a)(1); BAM 105 (July 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) a redetermination Respondent submitted to the Department on January 27, 2014; (ii) a Notice of Case Action sent to Respondent on February 7, 2014, showing that he was approved for FAP benefits based on income of \$0; (iii) a Notice of Case Action sent to Respondent on June 5, 2014, showing that he was approved for FAP benefits based on income of \$0; (iv) a response to the Department's subpoena request showing that Respondent had earnings from Martinrea Industries (Employer 1) from July 3, 2014 to May 28, 2015; (v) a benefit summary inquiry showing that Respondent received FAP benefits during the fraud period; and (vii) FAP OI budgets for each month during the fraud period showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in determining his FAP eligibility and allotment at the time of issuance.

The evidence presented showed that Respondent was notified via the Notices of Case Action that his FAP benefits were based on \$0 of income and he was advised of his responsibility to timely report changes. Respondent began receiving employment income from Employer 1 on July 3, 2014, and the Department testified that Respondent never reported this employment. Because Respondent did not report his employment and he was aware that his benefits were based on \$0 in income, the Department established by clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of his FAP benefits. Under these circumstances, the Department has established that Respondent committed an IPV concerning his FAP case.

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 established by clear and convincing evidence that Respondent committed an IPV. Respondent had no prior FAP IPVs. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from receipt of FAP benefits.

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.

In this case, the Department alleges that Respondent received FAP benefits totaling \$1,358 during the fraud period but was eligible for only \$48 in FAP benefits during this period once his income from Employer 1 is budgeted. The benefit summary inquiry establishes that Respondent was issued \$1,358 in FAP benefits during the fraud period.

To establish the FAP OI amount, the Department presented FAP OI budgets for each of the months of the fraud period to show the FAP benefits Respondent was eligible to receive if his unreported income had been included in the calculation of his FAP eligibility for each month. A review of the FAP OI budgets for shows that the Department properly considered Respondent's actual income from employment. Because Respondent did not timely report his employment income, he was not eligible for the 20% earned income deduction in the calculation of the household's net income. 7 CFR 273.18(c)(1); BAM 720, p. 10. A review of Respondent's recalculated income in the FAP OI budgets shows that, when Respondent's income from employment at Employer 1 is taken into consideration in determining his FAP eligibility, based on his one-person FAP group, Respondent had excess gross income for FAP eligibility for February 2015 to April 2015 and was eligible for only \$16 in monthly FAP benefits for each of the four remaining months in the fraud period. RFT 250 (October 2014), p. 1; RFT 260 (October 2014), p. 20. Thus, he was overissued \$1,310, in FAP benefits, the difference between the \$1,358 he received and the \$48 he was eligible to receive.

Thus, the Department is entitled to recoup and/or collect from Respondent \$1,310 for overissued FAP benefits during the fraud period.

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 did receive an OI of FAP benefits in the amount of \$1,310.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$1,310 in accordance with Department policy, less any amounts the Department has already collected and/or recouped.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.



AE/

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]
[REDACTED]

Petitioner

OIG
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Lansing, MI
48909-7562

Respondent

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

cc: [REDACTED]
IPV-Recoupment Mailbox