



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: March 7, 2018
MAHS Docket No.: 17-016599
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 March 5, 2018, from Detroit, Michigan. The Department was represented by Jason Rupp, 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 Family Independence Program (FIP) benefits and Food Assistance Program (FAP) 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 12 months?

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 [REDACTED] 2017, 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 FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to changes in income and assets to the Department within 10 days.
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 FAP fraud period is October 1, 2011 through March 31, 2015 (FAP fraud period).
7. The Department's OIG indicates that the time period it is consideration the FIP fraud period is February 1, 2010 through May 31, 2012 (FIP fraud period)
8. During the FAP fraud period, Respondent was issued \$15,670 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. During the FIP fraud period, Respondent was issued \$8,804.50 in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$15,670 and an OI in FIP benefits in the amount of \$8,804.50.
11. This was Respondent's first alleged IPV.
12. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 2016), 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 700 (January 2016), p. 7; 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(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 of her FIP and FAP benefits because she failed to notify the Department of income from an asset, as well as the asset itself. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented a multitude of applications, semi-annuals and redeterminations submitted by Respondent. The Department presented applications submitted on the following dates: [REDACTED], 2009; [REDACTED], 2012; [REDACTED], 2012; [REDACTED], 2013; [REDACTED], 2014; [REDACTED], 2014; [REDACTED], 2014; and [REDACTED], 2015. The Department also presented semi-annuals submitted on [REDACTED] 2014 and [REDACTED], 2015. The Department also presented redeterminations submitted on August 25, 2014 and January 26, 2015. In all of the applications, redeterminations and semi-annuals, Respondent did not notify the Department that she was receiving income from a trust.

Additionally, the Department presented documentation from [REDACTED] which showed Respondent had a beginning balance of \$65,305.33 on January 1, 2011 in an irrevocable trust. The Department presented statements from the trust which showed Respondent was issued payments directly, as well as payments that were issued to fund her mortgage, utilities, car repairs, furniture purchases and lawn maintenance throughout the FIP and FAP fraud periods. Respondent was issued payments ranging in various amounts but were as high as \$22,724.98 to pay off her mortgage on March 16, 2015. According to the documentation, Respondent's trust balance was \$23,168.31 as of January 1, 2015.

Respondent completed a multitude of applications, semi-annuals and redeterminations requesting FIP and FAP benefits throughout the FIP and FAP fraud periods. At no time did respondent advise the Department that she was receiving income from a trust or that the trust existed. Additionally, in the majority of the documents submitted, Respondent indicated that she was responsible for shelter expenses, which would have entitled her to additional benefits. Respondent consistently withheld information from the Department throughout the entirety of the fraud periods. Therefore, the Department has established by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP and FIP benefits. Therefore, 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; BEM 708 (October 2016), p. 1. 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. 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning her FIP and FAP benefits. Accordingly, Respondent is subject to a 12-month disqualification under the FAP and FIP programs, as it is his first IPV related to both programs.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department is seeking recoupment of FAP and FIP benefits as it alleges that Respondent received more benefits than she was entitled.

FAP OI

When determining asset eligibility, the Department will prospectively use the asset group's assets from the benefit month. BEM 400 (October 2011 and January 2015), p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. Throughout the entire FAP fraud period, the asset limit for FAP cases was \$5,000 or less. BEM 400, p. 5. For FAP cases, the Department considers trusts as a countable asset. BEM 400, p. 1.

Throughout the FAP fraud period, Respondent's trust exceeded the asset limit for FAP cases. As a result, Respondent was ineligible for FAP benefits during the entire FAP fraud period. The Department presented a FAP benefit issuance summary which showed Respondent received \$15,670 in FAP benefits during the fraud period. As Respondent was not eligible for FAP benefits during that time period, the Department established it was entitled to recoup \$15,670 in FAP benefits.

FIP OI

When determining asset eligibility, the Department will prospectively use the asset group's assets from the benefit month. BEM 400 (January 2010 and January 2015), p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. Throughout the entire FIP fraud period, the asset limit for FIP cases was \$3,000 or less. BEM 400, p. 5. For FIP cases, the Department considers trusts as a countable asset. BEM 400, p. 1.

Throughout the FIP fraud period, Respondent's trust exceeded the asset limit for FIP cases. As a result, Respondent was ineligible for FIP benefits during the entire FIP fraud period. The Department presented a FIP benefit issuance summary which showed Respondent received \$8,804.50 in FIP benefits during the fraud period. As Respondent was not eligible for FIP benefits during that time period, the Department established it was entitled to recoup \$8,804.50 in FIP benefits.

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 concerning FAP and FIP.
2. Respondent did receive an OI of FAP program benefits in the amount of \$15,670 during the FAP fraud period.
3. The Department has established an OI of FIP program benefits of \$8,804.50 during the FIP fraud period.

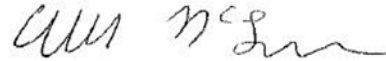
The Department is ORDERED to do the following in accordance with Department policy:

1. initiate recoupment and/or collection procedures for the FAP OI amount of \$15,670, less any amounts that have already been recouped and/or collected; and

2. initiate recoupment and/or collection procedures for the FIP OI amount of \$8,804.50, less any amounts that have already been recouped and/or collected.

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

EM/cg



Ellen McLemore

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) 335-6088; 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

Via Email:

MDHHS-Saginaw-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

