



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 3, 2018
MAHS Docket No.: 17-016970-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

AMENDED HEARING DECISION

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 June 13, 2018, from Detroit, Michigan. The Department was represented by Chad Essebaggers, 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).

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge Ellen McLemore and mailed on June 14, 2018, which is hereby **AMENDED** to for the sole purpose of correcting a typographical error in the Issues, Findings of Fact, Overissuance, and Order sections, so that the decision appropriately reflects a finding that Respondent was overissued Food Assistance Program (FAP) benefits that was requested by Petitioner and established by the evidence presented. The remainder of the decision and order is unchanged.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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 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 December 19, 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 FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report her circumstances and to report changes in her circumstances to the Department, such as changes in group size.
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 for FAP benefits is March 1, 2016 through December 31, 2016 (fraud period).
7. During the FAP fraud period, Respondent was issued \$4,024 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,458 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,566.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 the following cases:

- Willful overpayments of \$500 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 (January 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), pp. 7-8; 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(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 FAP benefits because she failed to notify the Department when her children were no longer residing in her household. 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 an application Respondent submitted to the Department on [REDACTED], 2015. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do" which explained reporting change circumstances including group size. The Department also presented an application submitted by Respondent on [REDACTED], 2016. In the application, Respondent indicated that her two children were in her home and that she was the primary caretaker.

Additionally, the Department presented records from [REDACTED]. The documents show that the children's father and step-mother were listed as their parents/guardians. The Department also presented documentation from the school, as well as correspondence from the children's step-mother, stating that the children lived with their father and step-mother. The Department presented a Temporary Authorization for [REDACTED] signed by Respondent on January 20, 2016, providing the children's

step-mother with authorization to make educational, medical, etc. decisions for the children. The document states that Respondent has legal custody but that the step-mother is the individual providing care for the children.

Given that the [REDACTED], 2016 application was submitted during the fraud period, the Department established by clear and convincing evidence Respondent affirmatively communicated false information to the Department. Respondent indicated that her two children were still residing in her home. The Department presented sufficient evidence to establish that statement was false. Therefore, the Department established by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits. Thus, the Department has established that Respondent committed an IPV in connection with her FAP case.

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 requested that Respondent be subject to a 12-month disqualification period. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV concerning FAP. Therefore, Respondent is subject to a one-year disqualification from her receipt of FAP benefits.

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 benefits as it alleges that Respondent received more benefits than she was entitled.

The Department has alleged that Respondent was issued \$4,024 in FAP benefits during the fraud period based on a group size that included Respondent's two children. The Department submitted budgets which revealed that Respondent would have been entitled to \$1,458 in FAP benefits with the removal of the children from the FAP group. As stated above, the Department provided sufficient evidence to establish that Respondent was not the primary caretaker of her two children. As such, the children

should not have been included in Respondent's FAP group. Accordingly, the Department has established that an overissuance occurred in the amount of \$2,566, and it is therefore, entitled to recoup that amount for FAP benefits it issued to Respondent 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 of FAP benefits.
2. Respondent did receive an OI of program FAP benefits in the amount of \$2,566.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$2,566, less any amounts already recouped/collected, in accordance with Department policy.

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

EM/tm



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) 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

Fiona Wicks
12185 James St Suite 200
Holland, MI
49424

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent



cc: Monica Shumaker
IPV-Recoupment Mailbox