



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 7, 2016
MAHS Docket No.: 15-008528
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric Feldman

**HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a three-way telephone hearing was held on March 2, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent from 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 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 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 June 9, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 changes in her residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using FAP benefits outside of the State of Michigan beginning in August of 2012 and August of 2013.
7. The OIG indicates that the time period they are considering the fraud period is [REDACTED], and [REDACTED].
8. During the alleged fraud period, Respondent was issued \$6,372 in FAP benefits from the State of Michigan.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.
11. On [REDACTED], Respondent signed an IPV Repayment Agreement (DHS-4350). See Exhibit B, pp. 1-2.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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:

- FAP trafficking OIs 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 2014), 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 (May 2014), p. 7; 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.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2012 and July 2013), p. 1.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to update residency information for the purpose of receiving FAP benefits from more than one state.

First, the Department presented Respondent's applications dated [REDACTED] and [REDACTED] (both [REDACTED] applications), to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 11-52. In both applications, Respondent indicated that she received benefits from the State of [REDACTED] since 1996 and that she did not intend on remaining in the State of Michigan. See Exhibit A, pp. 14 and 30.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 55-60. The FAP transaction history showed that from [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED] (majority). See Exhibit A, pp. 57-58. Then, the FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan in Michigan from [REDACTED]. See Exhibit A, p. 58. Finally, the FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED] from [REDACTED]. See Exhibit A, pp. 58-60.

Third, the Department presented out-of-state correspondence to show Respondent received FAP benefits simultaneously. See Exhibit A, pp. 53-54. The documentation confirmed that Respondent received FAP benefits in [REDACTED] from [REDACTED], [REDACTED], and [REDACTED] (e-mail dated [REDACTED]). See Exhibit A, p. 54. Moreover, the Department presented Respondent's benefit summary inquiry, which showed that she received Michigan FAP benefits from July 2012 to November 2012, and July 2013 to February 2014. See Exhibit A, pp. 62-64. As such, Respondent received FAP benefits simultaneously from October 2012 and July 2013 to February 2014.

Fourth, the Department indicated that Respondent and her husband are in fact migrant workers (traveling back and forth from [REDACTED] and Michigan). See Exhibit A, p. 4. The Department's OIG Investigation Report (investigation report) noted that Respondent traveled to the State of Michigan to work as a migrant worker for the years of 2010 to 2013. See Exhibit A, p. 4. In the calendar years of 2010 to 2011, the investigation report indicated that the Respondent's FAP case was opened from August through September. See Exhibit A, p. 4. In the calendar year of 2012, the investigation report

indicated that the Respondent's case progressively stayed open through November after having begun in July, a month earlier than the two previous years. See Exhibit A, p. 4. In the calendar year of 2013, the investigation report indicated that the case never closed after opening in July 2013. See Exhibit A, p. 4.

A migrant is a person who does both of the following:

- Works or seeks work in agriculture or a related seasonal industry.
- Moves away from his usual home to a temporary residence as a condition of employment or because the distance from his usual home is greater than 50 miles.

BEM 610 (October 2011 and July 2013), p. 1.

Migrant status continues as long as the migrant meets one of the following:

- Is employed in agriculture or a related seasonal industry.
- Has a commitment of employment or is actively seeking employment.

BEM 610, p. 1.

Migrant status continues for 30 days from the date the migrant last worked in an agricultural activity or entered Michigan, whichever is more recent. BEM 610, p. 1.

Exception: Migrant status continues beyond 30 days when any of the following occurs:

- Legal circumstances require a migrant to remain in the area such as labor relations dispute, immigration or incarceration.
- Illness or hospitalization prevents a migrant from leaving the area.
- Unusual agricultural circumstances affect farm work or crops in Michigan or the migrant's home base such as weather conditions or natural disasters.

BEM 610, p. 1.

For FAP only, a group that contains at least one individual who is a migrant/seasonal farmworker is considered a migrant/seasonal farmworker group. BEM 610, p. 2.

A group cannot receive benefits in more than one county/state in any given month. BEM 610, p. 3. Contact the other state to verify if the migrant was receiving FAP benefits in the month of the move. BEM 610, p. 3. The migrant is not entitled to benefits in Michigan for the month of the move if the other state verifies receipt or the migrant acknowledges participation. BEM 610, p. 3. The migrant may receive benefits in Michigan the month after the move, provided the other state verifies that benefits will not be available to the migrant that month. BEM 610, p. 3. Benefits are not available if

they are not authorized for the month or the migrant cannot obtain the authorized benefit. BEM 610, p. 3.

The Department must verify a migrant group's address, however, they cannot be required to have a fixed residence in the local area. BEM 610, pp. 3-4. If they live at a camp site, motel, temporary shelter, etc., they meet the residence requirement. BEM 610, pp. 3-4. You can not deny benefits solely for lack of residence verification if they do not have a permanent address. BEM 610, pp. 3-4. Note the lack of verification and the reason on the DHS-1171, Assistance Application. BEM 610, pp. 3-4.

A migrant group must live in the county at the time it files the application for FAP. BEM 610, pp. 3-4. Migrant groups cannot be required to live in the county or state for any length of time or have any intent of staying for any length of time to receive FAP benefits. BEM 610, pp. 3-4. For example, a migrant group arriving in Michigan to look for work could be eligible on the day of its arrival. BEM 610, pp. 3-4.

Based on the foregoing information and evidence, the Department has failed to establish a basis for a ten-year disqualification period. A review of both of Respondent's applications indicated that she reported to the Department on two different occasions that she had received assistance from the State of ██████. See Exhibit A, pp. 14 and 30. The undersigned understands that both applications occurred before the alleged IPV period. However, it also shows that Respondent did report to the Department that she receives assistance from ██████. In fact, Respondent's FAP case reopened in July 2013, which would mean that the Respondent submitted another application. The Department failed to present that application to the undersigned in order to see if she reported that she was receiving benefits from ██████. Moreover, there was no evidence to show that Respondent, during the alleged fraud period, made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage. Therefore, the undersigned finds that the Department failed to establish by clear and convincing evidence that Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

Additionally, it also appeared that the Department alleged that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state (this is a basis for a one-year disqualification). BEM 212 (April 2012 and July 2013), pp. 2-3 and BEM 220 (January 2012 and July 2013), p. 1. Again, though, the Department did not present evidence to establish Respondent's intent during the alleged IPV usage. The Department failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move during the alleged fraud period.

In summary, in the absence of any clear and convincing evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

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, pp. 15-16; BEM 708 (April 2014), 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

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. The amount of the overissuance is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6.

During the hearing, it was discovered that Respondent signed an IPV Repayment Agreement (DHS-4350) on [REDACTED]. See Exhibit B, pp. 1-2. By the Respondent signing the repayment agreement, the Department can initiate recoupment/collection procedures of the \$6,372 OI amount for the time period of [REDACTED], and [REDACTED]. See BAM 715, p. 10.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$6,372.

The Department is ORDERED to initiate **recoupment/collection** procedures for the amount of \$6,372 in accordance with Department policy.

EF/ hw



Eric Feldman
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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]