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GOVERNOR

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

MIKE ZIMMER
DIRECTOR



Date Mailed: March 16, 2016
MAHS Docket No.: 15-011056
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 telephone hearing was held on March 14, 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?

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], 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. On the Assistance Application signed by Respondent on [REDACTED], Respondent reported that he intended to stay in Michigan. See Exhibit A, p. 11.
5. Respondent was aware of the responsibility to report changes in his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan.
8. The OIG indicates that the time period they are considering the fraud period is [REDACTED].
9. During the alleged fraud period, Respondent was issued \$630 in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of [REDACTED].
11. This was Respondent's first alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was returned by the US Post Office as undeliverable.

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.

In this case, the Department alleged that Respondent committed an IPV of his FAP benefits. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing, it was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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.

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

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (July 2013), p. 1. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. A person cannot receive FAP in more than one state for any month. BEM 222, p. 3. Out-of-state benefit receipt or termination may be verified by one of the following: DHS-3782, Out-of-State Inquiry; Letter or document from other state; or Collateral contact with the state. BEM 222, p. 4.

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 (such as a DHS-826 or DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (July 2013; July 2014; and January 2015), p. 1.

First, the OIG Investigation Report stated that while the caseworker was completing an interview for an application on another case number, the caseworker was informed by Respondent's niece that Respondent was no longer living in Michigan and had returned to [REDACTED]. See Exhibit A, p. 3. Moreover, the report indicated that the OIG agent (not present for this hearing) spoke to Respondent's sister on an unspecified date who also stated Respondent was living in [REDACTED]. See Exhibit A, p. 3.

Second, the Department presented Respondent's application dated [REDACTED], to show that he acknowledged his responsibility to report changes as required and the application was submitted during the alleged fraud period. See Exhibit A, pp. 10-29. In the application, a question asked for a yes or no response if Respondent has "moved

from, or received assistance from, another state any time after August 1996.” See Exhibit A, p. 11. Respondent did not answer this question. See Exhibit A, p. 11. The question further asks “(i)f yes, what state?” See Exhibit A, p. 11. Respondent responded with a “no.” See Exhibit A, p. 11. However, the evidence established that Respondent was receiving ongoing FAP benefits from the State of [REDACTED] at the time of application. See Exhibit A, pp. 11 and 46-68.

Third, the Department presented Respondent’s FAP transaction history. See Exhibit A, pp. 31-34. The FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan in Michigan and out-of-state in [REDACTED] during the alleged fraud period. See Exhibit A, pp. 31-34.

Fourth, the Department presented an out-of-state verification from the State of [REDACTED] to show that Respondent received FAP benefits simultaneously. See Exhibit A, pp. 46-53. The evidence confirmed that Respondent received FAP benefits from the State of [REDACTED] and Michigan simultaneously from May 2014 to January 2015 (alleged fraud period). See Exhibit A, pp. 43-44; 50-53; and 69-70. It should be noted that there appeared to be several more months of concurrent receipt of benefits; however, the undersigned is only reviewing the time period in which the Department alleged.

Fifth, the Department presented Respondent’s FAP transaction history from the State of [REDACTED]. See Exhibit A, pp. 54-68. The FAP transaction history showed that Respondent used FAP benefits issued by the State of Illinois during the alleged fraud period. See Exhibit A, pp. 54-68.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits. As stated previously, the evidence indicated that Respondent received FAP benefits simultaneously (Michigan and [REDACTED] from May 2014 to January 2015. See Exhibit A, pp. 43-44 and 50-53. This represents approximately nine months of benefits Respondent received concurrently with the States of [REDACTED] and Michigan. In fact, the Department presented his application that was submitted during the fraud period in which he failed to notify the Department that he had been receiving FAP assistance from the State of [REDACTED]. See Exhibit A, pp. 11 and 50. See Exhibit A, p. 11. Finally, the Department presented Respondent’s FAP transaction history from both the States of Michigan and [REDACTED] that showed that Respondent used FAP benefits issued by both states during the fraud period. See Exhibit A, pp. 31-34 and 54-68. This evidence established that Respondent made a fraudulent statement or representation regarding his residence in order to receive multiple FAP benefits simultaneously from Michigan and [REDACTED]. See BEM 203, p. 1.

In summary, there was clear and convincing evidence that Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information for the purpose of maintaining Michigan FAP eligibility. Therefore, the Department has established 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a ten-year 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 OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In the present case, the undersigned calculated the total OI amount to be \$723 for the period of May 1, 2014 to January 31, 2015. See Exhibit A, pp. 43-44. Nonetheless, the Department sought a lower OI amount of \$630 for this same time period. See Exhibit A, p. 4. As such, the Department is only entitled to recoup \$630 of FAP benefits it issued to Respondent from May 1, 2014 to January 31, 2015. See BAM 720, pp. 7-8 and Exhibit A, pp. 43-44.

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 \$630.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$630 in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be personally disqualified from participation in the FAP program for 10 years.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]