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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

[REDACTED]

Date Mailed: April 8, 2016
MAHS Docket No.: 15-013057
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 April 4, 2016, 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 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 [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.
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 beginning in July of 2013.
8. The OIG indicates that the time period they are considering the fraud period is [REDACTED]. It should be noted that evidence showed that Respondent did not receive Michigan FAP benefits for the period of March 2014 to December 2014.
9. During the alleged fraud period, Respondent was issued \$1,313 in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Indiana.
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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (November 2012 and 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, pp. 2-3. 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, pp. 3-4.

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 (e.g., DHS-826, 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 (October 2012 and July 2014), p. 1.

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. It should be noted that this alleged fraud period represents the period of [REDACTED].

First, the Department presented Respondent's application dated [REDACTED], to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 12-35.

Second, the Department presented Respondent's online application dated [REDACTED], which was submitted during the alleged fraud period. See Exhibit A, pp. 36-64. In the application, Respondent indicated that he was receiving other FAP benefits,

and even indicated in the additional information section of the application that he moved from [REDACTED] and he is trying to get rid of his [REDACTED] benefits. See Exhibit A, pp. 38, 40, and 44.

Third, the Department presented a Front-End Eligibility (FEE) Investigation report (FEE report), in which the OIG agent (agent present for this hearing) conducted a home visit at Respondent's reported address in Michigan on [REDACTED]. See Exhibit A, p. 65. Instead, the FEE report stated that the OIG agent spoke to another individual who stated that Respondent moved out of the residence about one-year ago and she believed he moved to Indiana. See Exhibit A, p. 65.

Fourth, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 66-69. The FAP transaction history showed that from [REDACTED]; [REDACTED]; and [REDACTED], Respondent used FAP benefits issued by the State of Michigan in Michigan. See Exhibit A, pp. 66-69. Also, the FAP transaction history showed that from [REDACTED]; and [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED]. See Exhibit A, pp. 66-69.

Fifth, the Department presented a documentation record, which indicated that the OIG agent present for this hearing spoke to the Respondent via telephone on [REDACTED]. See Exhibit A, p. 72. The documentation record indicated that Respondent stated the following: (i) he was on vacation prior to April 2012 in [REDACTED] and notified the Department and then was cut-off benefits from Michigan; (ii) he claimed that he moved back to Michigan for a while; (iii) he stated he moved to [REDACTED] from April 2012 and lived there until approximately October 2014, when he moved back to Michigan; and (iv) and he acknowledged that he received FAP benefits from [REDACTED] while living there. See Exhibit A, p. 72.

Sixth, the Department presented evidence to establish that Respondent received FAP benefits simultaneously from the States of Indiana and Michigan from January 2015 to February 2015. See Exhibit A, pp. 70-71 and 73.

Based on the foregoing information and evidence, the Department has failed to establish a basis for a ten-year disqualification period. A review of Respondent's application dated [REDACTED] indicated that he reported to the Department that he had received assistance from the State of [REDACTED]. See Exhibit A pp. 38, 40, and 44. Therefore, the undersigned finds that the Department failed to establish by clear and convincing evidence that Respondent made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

Additionally, the Department also alleged that Respondent committed an IPV of his FAP because he failed to notify the Department that he no longer resided in Michigan. It

should be noted that this alleged fraud period represents the period of [REDACTED].

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012 and July 2014), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (November 2012 and July 2014) pp. 2-3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, pp. 2-3.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits for a one-year disqualification. The Department did not present any evidence to establish Respondent's intent during the alleged IPV usage other than out-of-state usage, a documentation record, and out-of-state correspondence. However, this evidence failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. In fact, the above concurrent receipt of benefits analysis, showed that Respondent reported to the Department that he received assistance from Indiana and did not withhold this information. This shows to the undersigned that he is not purposely withholding information from the Department.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining Michigan FAP eligibility, 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 OI 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.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

A client error is present in this situation for the OI period of February 2013 to February 2014 because the Respondent failed to report a change in residency in order to continue receiving FAP benefits from Michigan. The evidence established that Respondent acknowledged to the OIG agent that he had been resident of the State of Indiana from April 2012 to October 2014. See Exhibit A, p. 72. The evidence presented that Respondent no longer resided in Michigan and he moved to Indiana during the time period of April 2012 to October 2014. Therefore, Respondent was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits during this time period. See BEM 212, pp. 2-3 and BEM 220, p. 1.

Applying the overissuance period policy, it is found that the appropriate OI period begin date is [REDACTED]. BAM 715, pp. 4-5. Therefore, the OI month of February 2013 is removed from the total OI amount sought. See Exhibit A, p. 78.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from March 2013 to February 2014 in the amount of \$1,177. See Exhibit A, pp. 74 and 78. Thus, the Department is entitled to recoup \$1,177 of FAP benefits it issued to Respondent for [REDACTED].

Additionally, the Department can still proceed with recoupment of the OI when there is agency error. BAM 705 (July 2014), p. 6. An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Health and Human Services (DHHS) or department processes. BAM 705, p. 1. Examples include available information was not used or was used incorrectly, etc...See BAM 705, p. 1.

An agency error is present in this situation because Respondent properly notified the Department that he received assistance from [REDACTED]. However, the Department failed to act on this reported information. Respondent was not eligible for Michigan FAP benefits during the period he was receiving FAP benefits from [REDACTED]. Thus, the Department is entitled to recoup \$32 of FAP benefits it issued to Respondent from [REDACTED]. BAM 705, p. 6 and Exhibit A, p. 76.

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 \$1,209.

The Department is **ORDERED** to reduce the OI to \$1,209 for the period [REDACTED] to [REDACTED], and [REDACTED] and initiate recoupment/collection procedures 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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]