



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 29, 2016
MAHS Docket No.: 15-016627
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

**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 January 13, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). The Respondent appeared and represented himself at hearing.

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 September 14, 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. On the Assistance Application signed by Respondent on May 26, 2009, 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 submitted a DHS-1171 application for FAP benefits in Michigan on December 29, 2011.
8. The OIG indicates that the time period they are considering the fraud period is January 1, 2012, through November 30, 2012.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] 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 not** returned by the U.S. 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.

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; BAM 720.

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 (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 Respondent submitted an application for assistance, DHS-1171, on May 26, 2009. His signature verifies that he acknowledged and understood his rights and responsibilities for reporting accurate information to DHHS. On July 17, 2015, documentation was received from the State of [REDACTED] verifying that the Respondent received Supplemental Nutrition Assistance Program (SNAP) in their state from December 2011 to December 2012. On December 29, 2011, the Respondent submitted a DHS-1171, Application for Assistance, and failed to report receiving benefits from the State of [REDACTED]. The Respondent received duplicate benefits from the State of [REDACTED] from January 1, 2012, to November 30, 2012.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720.

In this case, the Petitioner has demonstrated by clear and convincing evidence that the Respondent was aware of the rights and responsibilities for receiving FAP benefits. The Petitioner has demonstrated that the Respondent received benefits in both [REDACTED] and Michigan. This Administrative Law Judge indicated during the hearing that the Respondent's testimony regarding not using the [REDACTED] benefits was credible, and the Respondent had no intent to commit the program violation. However, upon review of the evidence submitted for consideration, this conclusion was reached prematurely. The Petitioner presented Exhibit 1, page 17, which shows the Respondent started receiving FAP benefits in [REDACTED] in December 2011. He then applied for FAP benefits in Michigan on December 29, 2011. The State of [REDACTED] provided a written statement indicating these benefits were not closed until December 2012.

To find the Respondent credible regarding not intending to receive concurrent benefits, this Administrative Law Judge would have to ignore the small window of time between applications, in addition, ignore the failure to report the receipt of benefits from the State of [REDACTED] for the month of December 2011. At first glance, this Administrative Law Judge had reasoned the Respondent did not intend to receive concurrent benefits. However, upon closer review, this Administrative Law Judge is unable to ignore the above evidence.

The Petitioner has demonstrated that the Respondent applied for FAP benefits while in receipt of benefits from another state. Further, the benefits awarded in the other state continued for months following the application and receipt of FAP benefits in Michigan. The act of applying for and receiving benefits in one state and then concurrently applying for benefits in another state for the same benefits without disclosing the prior application and receipt of benefits is enough to demonstrate the program violation being requested by the Petitioner. The Respondent is responsible to report benefits received in another state when applying for benefits; the act of omission still results in a program violation.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

In this case, the Petitioner has demonstrated that the Respondent received concurrent benefits. Therefore, the Respondent forfeited his right to all FAP benefits issued during the timeframe in question by receiving benefits concurrently in another state.

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 \$ [REDACTED]

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

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

MJB/jaf



Michael J. Bennane
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]

CC:

[REDACTED]