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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 9, 2016
MAHS Docket No.: 15-016674
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

HEARING DECISION FOR 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 Regulation (CFR), particularly 7 CFR 273.16 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 May 23, 2016, from Detroit, Michigan. The Department was represented by Craig Carlton, 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 benefits for 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 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 residence and that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
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 is [REDACTED] (fraud period).
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,856.49.
8. This was Respondent's first alleged IPV.
9. A notice of hearing was mailed to Respondent at the last known address and was not 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), 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 \$500.00 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 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.

As a preliminary matter, the Department alleged that Respondent committed an IPV of his FAP benefits because: (i) he trafficked his FAP benefits at two different Stores (unrelated to each other); and (ii) he failed to notify the Department that he no longer resided in Michigan, but continued to receive and use Michigan-issued FAP benefits while out-of- state. The undersigned addresses the alleged trafficking and out-of-state usage separately below:

IPV - Trafficking

BAM 700 defines trafficking as:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700, p. 2. Moreover, FAP trafficking includes fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (January 2009), p. 2.

The Department's argument against Respondent for trafficking FAP benefits is as follows:

- there exists Store 1, where the United States Department of Agriculture ("USDA") conducted an investigation at Store 1 regarding food trafficking and determined that Store 1 was engaged in food trafficking and ultimately led to Store's 1 permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- there also existed another store (different owner/location) (hereinafter referred to as "Store 2"), where an investigation at the Store regarding food trafficking;
- Store's 1 and 2 layout and inventory makes it unlikely that someone would make regular and/or large purchases of food; and
- As to Store 1, the Department alleged that Respondent trafficked \$396.67 for the period of October 2009 to April 2010;
- As to Store 2, the Department alleged that Respondent trafficked \$260.10 for the period of May 2010 to July 2010; and
- Based on the above information, the Department argued that Respondent trafficked his FAP benefits.

First, the Department presented evidence from the USDA that Store 1 engaged in FAP trafficking, which resulted in Store 1's permanent disqualification from SNAP on May 4, 2010. See Exhibit A, pp. 48-49.

Second, the Department argued that the Store 1 and Store 2's layout and inventory make it unlikely that someone would make regular and/or large purchases of food. See Exhibit A, pp. 4-5. The Department presented additional documentation regarding the alleged trafficking conducted at Store 1 and Store 2. See Exhibit A, pp. 44-45, 58, and 90-95. Finally, the Department presented pictures and/or a drawn-up map, which showed that Store 1 and Store 2 has purchasable foods and non-purchasable foods. See Exhibit A, pp. 50-57 and 80-89.

Third, to establish that Respondent trafficked his FAP benefits at each Store, the Department relied on Respondent's FAP transaction history. See Exhibit A, pp. 32-33. For example, on [REDACTED], Respondent made one large purchase for \$43.90 at Store 1 and then the next day, he made another purchase for \$30 at Store 1. See Exhibit A, p. 32. Respondent repeated this pattern of high dollar transactions at Store 1. See Exhibit A, p. 32. In fact, Respondent made one large purchase at Store 1 on [REDACTED] for \$104.52. See Exhibit A, p. 32.

Additionally, Respondent conducted large transactions at Store 2. See Exhibit A, p. 33. For example, Respondent made a transaction for \$100.02 on [REDACTED] at Store 2 and then made another transaction for \$100 at Store 2 again. See Exhibit A, p. 33. Moreover, Respondent made another large purchase at Store 2 for \$60.08 on [REDACTED], 2010. See Exhibit A, p. 33.

Fourth, the OIG Investigation Report indicated that the OIG agent spoke to Respondent's ex-girlfriend on or around [REDACTED]. See Exhibit A, p. 4. Moreover, the OIG agent testified he spoke to Respondent approximately a year ago as well as on [REDACTED], and Respondent stated the following: (i) he had never been to Store 2; (ii) he allowed family and/or friends to use his Bridge card; and (iii) it must have been family and/or friends who conducted the alleged trafficking.

However, Respondent failed to be present at the hearing to rebut the Department's evidence, which the undersigned finds by clear and convincing evidence that the Department has established that Respondent committed an IPV involving his FAP benefits.

First, the evidence established that Stores 1 and 2 did not have the food items or the physical means to support high dollar transactions and/or multiple purchases in a short time period. See Exhibit A, pp. 1, 4-5, 44-45, 50-57, 80-89, and 90-95.

Second, the Department's main argument was based on Respondent's FAP transaction history, which presented persuasive evidence that Respondent committed an IPV involving his FAP benefits. The Department presented several transactions that were

suspicious at Store 1 and Store 2 because Respondent had high dollar and/or closely related transactions at the Stores, which is consistent with traditional trafficking patterns. See Exhibit A, pp. 32-33. This evidence is persuasive to conclude that the Respondent is involved in trafficking. In summary, the Department established by clear and convincing evidence that Respondent trafficked his FAP benefits at the Stores.

IPV - Residence

In this case, the Department also alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department that he no longer resided in Michigan, but continued to receive and use Michigan-issued FAP benefits while out-of-state for the period of [REDACTED].

To be eligible, a person must be a Michigan resident. BEM 220 (January 2012), 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 (April 2012), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

First, the Department presented Respondent's application dated July 14, 2008, to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 12-20.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 35-36 and 42. The FAP transaction history showed that from [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED]. See Exhibit A, pp. 35-36 and 42.

Third, the Department presented Respondent's LexisNexis report to argue that he resided out-of-state. See Exhibit A, pp. 96-100.

Fourth, as stated previously, the OIG agent testified that he spoke to Respondent on [REDACTED] in which he also stated to the agent that he moved to [REDACTED] on [REDACTED] and notified his caseworker via telephone of the change.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, purposely failed to report a change in residency in order to continue receiving FAP benefits from Michigan. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the FAP transaction history/LexisNexis report. However, this failed to show by clear and convincing evidence that Respondent intentionally

withheld information concerning an out-of-state move during the alleged fraud period for the purpose of maintaining Michigan FAP eligibility. In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits based on his trafficking of FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

Overissuance – Trafficking

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.

For FAP trafficking, the OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- Documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. This can be established through circumstantial evidence.

BAM 720, p. 8

As stated in the analysis above, the Department has established that Respondent committed an IPV involving his FAP benefits because he trafficked his FAP benefits at Store's 1 and 2. Thus, it is found that Respondent received an OI of program benefits in

the amount of \$656.77 from the FAP program for the period of [REDACTED]
[REDACTED] See BAM 720, p. 8.

Overissuance – Residence

As stated previously, the Department failed to show that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan. Thus, no IPV was committed for the alleged out-of-state usage. 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 (July 2014), p. 1.

Based on the FAP transaction history, it is persuasive evidence that Respondent was not a Michigan resident. See BEM 220, p. 1. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. Moreover, the FAP transaction history shows that Respondent was using benefits out-of-state for more than thirty days. See BEM 212, p. 2. This established that Respondent is not temporarily absent from his group and he was not eligible for FAP benefits. Therefore, a client error is present in this situation because Respondent failed to notify the Department of his change in residency. See BAM 715, p. 1.

Applying the OI begin date policy and in consideration of the out-of-state use that began on [REDACTED], the Department determined that the OI period began on [REDACTED]. See Exhibit A, pp. 5 and 42. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

Additionally, 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, p. 6.

In establishing the OI amount, the Department presented Respondent's FAP transaction history that showed that he conducted \$1,199.72 in transactions in the State of Colorado for the period of [REDACTED]. See Exhibit A, pp. 35-36. Thus, the Department is entitled to recoup \$1,199.72 from October [REDACTED]
[REDACTED]

In summary, the Department is entitled to recoup \$1,856.49 in FAP benefits for the period of [REDACTED] (\$656.77 OI for trafficking plus \$1,199.72 OI for residency).

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.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$1,856.49.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$1,856.49 in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period **12 months**.

EF/hw



Eric J. 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]