



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 20, 2016
MAHS Docket No.: 15-018770
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 26, 2016, from Detroit, Michigan. The Department was represented by Debra Echtenaw, 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 FAP and CDC 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) of FAP and CDC benefits?
3. Should Respondent be disqualified from receiving FAP benefits for 12 months and CDC benefits for six months?

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 FAP and CDC benefits.
3. Respondent was a recipient of FAP and CDC benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency and employment.
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] (FAP fraud period).
7. During the fraud period, Respondent was issued \$3,162.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,162.00.00.
9. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] (CDC fraud period).
10. During the fraud period, Respondent was issued \$2,144.00 in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
11. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$2,144.00.
12. This was Respondent's first alleged IPV of both FAP and CDC benefits.
13. 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.

The Child Development and Care (CDC) program is established by Titles IV-A, IV-E and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, **or**
 - the total OI amount is less than \$1000, **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 (July 2013), p. 12.

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 (July 2013) 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.

FAP

In this case, the Department alleges 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. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (April 2011), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purpose other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (September 2010), p. 2.

At the hearing, the Department presented transaction history which revealed that Respondent used her Michigan issued FAP benefits in both Michigan and Illinois between [REDACTED] and [REDACTED]. However, the transaction history further revealed that beginning [REDACTED], Respondent used her Michigan issued FAP benefits exclusively in Illinois and continued to do so until [REDACTED]. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

The Department also presented an application submitted online by Respondent on [REDACTED] in which she listed her address as the [REDACTED] address in Michigan and listed that she worked for MV Transportation. A review of Respondent's transaction history established that the information contained in the February 2014 application was untrue. Specifically, the transaction history showed that on [REDACTED], [REDACTED] and [REDACTED], Respondent completed transactions in [REDACTED]. Additionally, as previously stated the transaction history showed no transactions completed in Michigan after December [REDACTED]. Therefore, it is found that the

Department has established that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits.

CDC

In support of its contention that Respondent committed an IPV of her CDC program benefits, the Department submitted an Employment Verification from Respondent's employer which revealed that Respondent began working with MV Transportation on [REDACTED] and that she received her last pay on [REDACTED]. Additionally, the Department provided a Redetermination submitted by Respondent on [REDACTED] and an application submitted by Respondent on [REDACTED]. In both the Redetermination and application, Respondent indicated that she was working with MV Transportation at that time. Respondent failed to appear at the hearing. As such, Respondent failed to offer any explanation as to why she submitted documentation stating that she was working with [REDACTED] after the date her employment ended, and after she was no longer a resident of Michigan. Therefore, it is found that the Department has established that Respondent intentionally withheld or misrepresented information for the purpose of maintaining CDC benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 12.

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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 2009), p. 2. 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, p. 13.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12 month disqualification of FAP benefits. The Department has satisfied its burden of showing that Respondent committed an IPV concerning CDC benefits. However, although Department policy allowed for a one year disqualification of CDC benefits during the CDC fraud period, the Department as only requested a six month disqualification. Accordingly, it is found that Respondent is subject to a six month disqualification under the CDC benefits

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.

FAP

At the hearing, the Department established that the State of Michigan issued a total of \$3,162.00 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

In support of its contention that Respondent was overissued FAP benefits, the Department presented Respondent's FAP transaction history showing that she used her FAP benefits issued by the State of Michigan in [REDACTED] from [REDACTED], through [REDACTED]. As discussed above, Respondent was no longer eligible for FAP benefits after she resided outside Michigan for more than 30 days. By February 2014, it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p 2 Therefore, the Department has established it is entitled to recoup the \$3,162.00 in FAP benefits it issued to Respondent during the FAP fraud period.

CDC

Under Department policy, there are four valid CDC need reasons. Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of:

1. Family preservation.
2. High school completion.
3. An approved activity.
4. Employment.

At the hearing, the Department established that the State of Michigan issued a total of \$2,144.00 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

The evidence presented at the hearing established that Respondent was no longer at [REDACTED] as she stated on the [REDACTED] Redetermination and the [REDACTED] application. There was no other evidence to support a finding that Respondent was eligible for CDC benefits based upon any of the aforementioned need reasons. Additionally, the evidence provided at the hearing established that Respondent was no longer a resident of Michigan during the CDC fraud period. Therefore, the Department has established it is entitled to recoup the \$2,144.00 in CDC benefits it issued to Respondent during the CDC fraud period.

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 of both FAP and CDC benefits.

2. Respondent did receive an OI of program benefits in the amount of \$3,162.00 in FAP benefits from [REDACTED].
3. Respondent did receive an OI of program benefits in the amount of \$2,144.00 in CDC benefits from [REDACTED].

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$3, 162 00 relating to FAP benefits issued from [REDACTED].

The Department is FURTHERED ORDERED to initiate recoupment/collection procedures for the amount of \$2,144 00 relating to CDC benefits issued from [REDACTED].

It is FURTHER ORDERED that Respondent be disqualified from the receipt of FAP benefits for a period of 12 months.

It is FURTHER ORDERED that Respondent be disqualified from the receipt of CDC benefits for a period of six months.

JM/hw



Jacquelyn A. McClinton

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]