



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 30, 2016
MAHS Docket No.: 15-026103
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 September 26, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED] (Respondent).

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 November 24, 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. Respondent was aware of the responsibility to report changes in her residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using FAP benefits outside of the State of Michigan beginning in February of 2013.
7. The OIG indicates that the time period they are considering the fraud period is April 1, 2013 to July 31, 2013.
8. During the alleged fraud period, Respondent was issued ██████ in FAP benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP benefits from the State of Tennessee.
10. This was Respondent's first alleged IPV.
11. On July 15, 2016, the Michigan Administrative Hearing System (MAHS) sent Respondent a Notice of Disqualification Hearing informing her of a hearing scheduled for August 18, 2016.
12. On or about August 8, 2016, the notice of hearing was returned by the US Post Office as undeliverable.
13. On August 17, 2016, an Administrative Law Judge issued an Adjournment Order.
14. On August 24, 2016, MAHS sent Respondent a Notice of Disqualification Hearing informing her of a hearing scheduled for September 26, 2016. This 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), 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, 2015, 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 2015), pp.12-13.

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 (October 2015), 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP for the period of June 2013 to July 2013 because she failed to update residency information for the purpose of receiving FAP benefits from more than one state. Also, the Department alleges that Respondent committed an IPV of her FAP for the period of April 2013 to July 2013 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.

A person cannot receive FAP in more than one state for any month. BEM 222 (March 2013), p. 2. 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. 3.

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 her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (June 2013), p. 1.

Additionally, to be eligible, a person must be a Michigan resident. BEM 220 (March 2013), 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) 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 online application dated November 5, 2012, to show that she acknowledged her responsibility to report changes as required. Exhibit A, pp. 9-20.

Second, the Department presented Respondent's Notice of Case Actions dated December 4, 2012; December 8, 2012; and December 17, 2012, to show that each notice advised Respondent to report changes within 10-days. Exhibit A, pp. 21-40 (the Notice of Case Action dated December 4, 2012, included a Change Report).

Third, the Department presented Respondent's FAP transaction history. Exhibit A, pp. 41-42. The FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan out-of-state in Tennessee from February 5, 2013 to July 12, 2013. Exhibit A, pp. 41-42.

Fourth, the Department presented evidence to show that Respondent received FAP benefits simultaneously from the States of Tennessee and Michigan from June 2013 to July 2013. Exhibit A, pp. 43-45. It should be noted that Respondent received Medical Assistance benefits in Tennessee from March 1, 2013 to November 5, 2013, and also received FAP benefits in Tennessee from June 1, 2013 to April 30, 2014, and June 1, 2014 to December 31, 2014. Exhibit A, pp. 43-44.

Fifth, the Department presented Respondent's "Case Comments – Summary" (case summary) to show that there was no indication that Respondent verbally reported her change in residence. Exhibit A, pp. 8 and 46-47. The case comments also reported that on or about October 28, 2013, a FAP telephone interview was conducted with Respondent in which she reported receiving benefits for the month of October (2013) in Tennessee and state she canceled her Tennessee benefits before moving to Michigan in October 2013. Exhibit A, p. 46. Also, the caseworker noted in the case comments that the worker called the Tennessee public assistance office and verified that Respondent did receive benefits in October (2013) and is scheduled to receive benefits in November (2013); therefore, the worker denied the FAP benefits because Respondent is active in another State. Exhibit A, p. 46.

In response, Respondent makes the following arguments and/or assertions: (i) she did not commit an IPV of her FAP benefits; (ii) she was aware of the 10-day reporting rules; (iii) she thought she would have reported her move to Tennessee within the reporting rules; (iv) she reported that she had come back to Michigan in October 2013, as documented in the case comments (Exhibit A, p. 46); (v) she was out-of-state in Tennessee from February 2013 to September 2013; and (vi) she might have alleged some medical conditions she suffers from (Exhibit A, p. 14 – application indicated she was determined disabled).

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence a basis for a ten-year disqualification period. Respondent claimed that she would have reported her move to Tennessee within 10-

days of the reporting rules, but she failed to provide any documentation showing such. Nonetheless, the evidence record did indicate, though, that Respondent reported that she received FAP benefits from Tennessee during a FAP telephone interview on or about October 28, 2013. Exhibit A, p. 46. This evidence shows that Respondent did not intentionally withhold or misrepresent her residency information for the purpose of receiving FAP benefits from more than one state because she eventually reported it to the Department. Moreover, there was no evidence to show that Respondent, during the alleged fraud period, made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage. Therefore, the undersigned finds that the Department failed to establish by clear and convincing evidence that Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

Additionally, the Department alleges that Respondent committed an IPV of her FAP for the period of April 2013 to July 2013 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. Again, though, the Department did not present any evidence to establish Respondent's intent during the alleged IPV usage other than the FAP transaction history, out-of-state correspondence, and case comments. However, this evidence failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state for the purpose of maintaining Michigan FAP eligibility. As such, 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, p. 15; 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/she 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 (October 2015), 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/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

In this case, a client error is present in this case due to Respondent's failure to report a change in residency in order to continue receiving FAP benefits from Michigan. Moreover, a client error is present in this case due to Respondent's failure to timely report the receipt of FAP benefits from out-of-state. As such, Respondent was not eligible for FAP benefits during the OI period and was overissued FAP benefits for any period she was ineligible to receive FAP benefits. See BEM 212, p. 2; BEM 220, p. 1; and BEM 222, p. 3.

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 April 2013 to July 2013 in the amount of [REDACTED]. Exhibit A, p. 45. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent for April 1, 2013 to July 31, 2013.


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 [REDACTED].

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

EF/tm



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

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