



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: April 26, 2016
MAHS Docket No.: 15-013112
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on April 13, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

The Respondent did not appear at the hearing and it was held in the 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 the Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
3. Should the Respondent be disqualified from the Food Assistance Program (FAP) and Family Independence Program (FIP)?

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 July 20, 2015, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV. Exhibit A, p 3.
2. On January 21, 2012, the Respondent signed a Redetermination (DHS-1010) form acknowledging the duty to report any change of residency to the Department. Exhibit A, pp 11 – 14.
3. On an application for assistance dated July 3, 2013, the Respondent acknowledged the duty to report any change of residency to the Department. Exhibit A, pp 15 – 28.
4. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill the requirements of receiving public assistance.
5. From February 1, 2013, through August 31, 2013, the Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] Exhibit A, p 38.
6. From February 1, 2013, through May 15, 2013, the Respondent received Family Independence Program (FIP) benefits totaling \$ [REDACTED] Exhibit A, p 39.
7. The Respondent began to use her Food Assistance Program (FAP) benefits in the state of Alabama on November 9, 2012, and continued to use them exclusively in Alabama through October 13, 2013. Exhibit A, pp 33 – 34.
8. The Respondent has utility bills in her name in Alabama. Exhibit A, pp 35 – 36.
9. The Respondent was not a Michigan resident as of February 1, 2013.
10. On July 20, 2015, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6 – 9.
11. This was the Respondent's first alleged IPV. Exhibit A, p 8.
12. A notice of hearing was mailed to the 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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-.3011.

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 \$500 or more, **or**
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2016), 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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.

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 (July 1, 2013), 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. 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.

To be eligible for Food Assistance Program (FAP) and Family Independence Program (FIP) benefits, a person must be a Michigan resident. A person is considered a resident under the Food Assistance Program (FAP) 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2016), p 1.

A person is a resident for FIP benefits if all of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

BEM 220, p1.

On January 21, 2012, and July 3, 2013, the Respondent acknowledged the duty to report any change of residency to the Department. The Respondent was a FAP recipient from February 1, 2013, through August 31, 2013, and a FIP recipient from February 1, 2013, through May 15, 2013. The Respondent began using her FAP benefits in Alabama on November 9, 2012, and used them exclusively in Alabama through October 13, 2013. The use of benefits in another state is evidence of a lack of intent to remain a Michigan resident. The Petitioner has utility bills in her name in Alabama and this is further evidence of her intent to remain an Alabama resident. The Department determined that the Respondent no longer had the intent to remain a Michigan resident as of February 1, 2013. If the Respondent had reported a change of residency to the Department, the Respondent would not have been eligible for any of the FAP and FIP benefits she received during the period of alleged fraud.

The Department has established that the Respondent intentionally failed to report a change of residency for the purposes of receiving Food Assistance Program (FAP) and Family Independence Program (FIP) benefits that the Respondent would not have been eligible to receive otherwise.

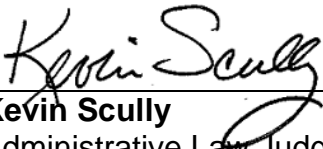
DECISION AND ORDER

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 the Respondent committed an IPV.
2. The Respondent did receive an OI of Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]

3. The Respondent did receive an OI of Family Independence Program (FIP) program benefits in the amount of \$ [REDACTED]
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
5. It is FURTHER ORDERED that the Respondent be disqualified from the Food Assistance Program (FAP) and Food Assistance Program (FAP) for a period of 12 months.

KS/las



Kevin Scully
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]

[REDACTED]

Respondent

[REDACTED]