



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: April 22, 2016
MAHS Docket No.: 15-014521
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

**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 April 21, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). The Respondent appeared and was represented by attorney [REDACTED].

Two interpreters from the [REDACTED] service appeared to provide interpretation services between English and [REDACTED]. Those two interpreters, [REDACTED] and [REDACTED] both became disconnected a few minutes into the hearing. A friend of the Respondent, [REDACTED], served as an interpreter with the consent of the parties.

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 July 30, 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 February 8, 2013, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her 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 began using FAP benefits outside of the State of Michigan beginning in July 20, 2014.
8. The OIG indicates that the time period they are considering the fraud period is September 1, 2014 through December 31, 2014.
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-type benefits from the State of Colorado.
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 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, 2016, 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 (1/1/16), 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 (1/1/16), p. 6; 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, Respondent applied for FAP on February 8, 2013 (Exhibit 1 Page 12). Beginning in July 2014, she began using her FAP outside of Michigan. On September 4, 2014 she applied in Colorado for SNAP (Exhibit 1 Page 36) and provided a Colorado address. Within the application (Exhibit 1 Page 37) she was asked whether anyone in the home received benefits from another state in the prior 30 days. She did not answer that question, although she answered the other questions in the boxes surrounding that question. She was also asked to list everyone living in her home, and she identified herself and one other person. During the hearing she testified that she was living in a home with other people at the time, but those people were not identified in the application.

She received SNAP from Colorado from September 2014 through January 2015 (Exhibit 1 Page 49). She was receiving FAP at the time he applied for SNAP. She testified that she informed the Department that she was moving to Colorado, but the Department did not have a record of any such notice.

Respondent's credibility is in question. She did not answer a critical question about whether she had received assistance from another state leading up to her Colorado application. She did not truthfully answer the questions about people in her home. Had she answered those questions truthfully, she might have not been eligible for the benefits she was provided by the Department. The Department has presented clear and convincing evidence that Respondent intentionally violated the program rules by receiving FAP from Michigan while concurrently receiving SNAP from Colorado. Although there was an argument that she did not make a false statement in her application for benefits in Colorado, the truth is that she withheld material information from the Department – and from the State of Colorado - and the evidence is convincing that she withheld that information for the purpose of receiving excess benefits. Under BAM 720 (5/1/14) at p. 16 there is a “ten-year disqualification for concurrent receipt of benefits if fraudulent statements were made regarding identity or residency; see BEM 203.” In BEM 222 (7/1/13) at p. 3 it notes that, “A person cannot receive FAP in more than one state for any month.”

Disqualification

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

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 (7/1/13), 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.

In this case, Respondent received concurrent benefits in Michigan and Colorado for at least four months in 2014. She is to be disqualified for 10 years.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 p. 1.

In this case, Respondent received \$ [REDACTED] in FAP from Michigan at the time she was receiving SNAP from Colorado. She was not entitled to those benefits, and consequently, she received an OI of \$ [REDACTED] in benefits that are to be recouped.

DECISION AND ORDER

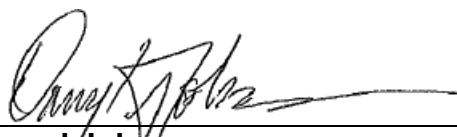
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$ [REDACTED].

The Department is ORDERED to initiate 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.

DJ/mc



Darryl Johnson
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]

Counsel for Respondent

[REDACTED]