



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: July 11, 2016
MAHS Docket No.: 15-026509
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 June 23, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], 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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (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. On an application for assistance dated January 15, 2013, the Respondent acknowledged the duty to report the receipt of food assistance from another state. Exhibit A, pp 10 – 21.

2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. The Respondent reported to the Department that he had not moved from another state, received assistance from another state, or received food assistance from another state. Exhibit A, pp 14.
4. The Respondent informed the Department that he intended to remain a resident of Michigan on his January 15, 2013, application for assistance. Exhibit A, pp 10 – 21.
5. The Respondent was an ongoing food assistance recipient receiving benefits from the state of Illinois from February 23, 2012, through May 9, 2014. Exhibit A, p 22 – 23.
6. The Respondent was an ongoing Michigan Food Assistance Program (FAP) recipient from January 16, 2013, through November 30, 2013, receiving benefits totaling \$2,092. Exhibit A, pp 28 – 30.
7. The Respondent began using his Michigan issued Food Assistance Program (FAP) benefits in Illinois on February 11, 2013, and used them exclusively in Illinois through November 14, 2013. Exhibit A, pp 24 – 27.
8. On December 17, 2016, 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 5 – 8.
9. The Department's OIG filed a hearing request on December 17, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
10. This was Respondent's first alleged IPV.
11. 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (July 1, 2013), p 3.

To be eligible for FAP 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 cannot receive FAP in more than one state for any month. BEM 220.

On an application for assistance dated January 15, 2013, the Respondent acknowledged the duty to report the receipt of food assistance from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. The Respondent reported to the Department on his application for assistance that he had not moved from another state, received assistance from another state, or received food assistance from another state. The Respondent informed the Department that he intended to remain a resident of Michigan on his application for assistance.

However, the Respondent failed to report to the Department the he had applied for food assistance benefits in Illinois and was an active recipient of Illinois food assistance from February 23, 2012, through May 9, 2014. After applying for FAP benefits on January 15, 2013, the Respondent began using his FAP benefits in Illinois on February 11, 2013, and used them exclusively in Illinois through May 9, 2014.

The use of FAP benefits exclusively in another state is evidence of a lack of intent to remain a Michigan resident. The Respondent was not eligible to receive FAP benefits in Michigan on January 15, 2013, because he was receiving food assistance concurrently in Illinois. The Respondent made false statements on his application for benefits when he indicated that he intended to remain a Michigan resident and failed to disclose his Illinois benefits.

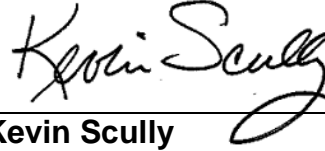
The Respondent was an ongoing recipient of Michigan FAP benefits from January 16, 2013, through November 30, 2013, receiving benefits totaling \$ [REDACTED]. The Respondent received FAP benefits totaling \$ [REDACTED] during this period but was not eligible to receive any of these benefits. Therefore, the Respondent has received a \$ [REDACTED] overissuance of FAP benefits. This Administrative Law Judge finds that the Respondent intentionally made false statements on his application for benefits concerning his receipt of food assistance from Illinois for the purpose of becoming eligible for and maintaining his eligibility for FAP benefits that he would not have been eligible to receive otherwise. Since the Petitioner received FAP benefits while concurrently receiving food assistance from another state, the Department has credibly established that a 10 year disqualification period is appropriate.

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 did receive an OI of Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

4. It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.



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

Petitioner

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Respondent

[REDACTED]