



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: October 14, 2016
MAHS Docket No.: 15-018829
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 September 22, 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).

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV).
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) by making a fraudulent statement or representation regarding his identity or residence in order to receive multiple Food Assistance Program benefits simultaneously?
3. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
4. Did Respondent receive an over-issuance (OI) of Family Independence Program (FIP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On September 17, 2008, Respondent submitted an application for Food Assistance Program (FAP) benefits through Maryland. Respondent was approved and received Food Assistance Program (FAP) benefits through Maryland until April 6, 2010.
2. On September 3, 2009, Respondent submitted a fraudulent online application for Food Assistance Program (FAP) benefits through Michigan. Respondent was receiving Food Assistance Program (FAP) benefits through Maryland. On the application Respondent indicated she was not receiving Food Assistance Program (FAP) benefits. Respondent electronically signed the affidavit in the application certifying that the information provided was true and that she had received and reviewed notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
3. From September 3, 2009 to February 28, 2010, Respondent received Food Assistance Program (FAP) benefits from Michigan and Maryland simultaneously.
4. On October 16, 2009, Respondent began receiving Family Independence Program (FIP) benefits through Michigan. Respondent's Family Independence Program (FIP) benefits through Michigan continued until February 28, 2010.
5. On December 14, 2009, Respondent began using her Michigan Electronic Benefit Transfer card outside Michigan. The Michigan card was used exclusively outside of Michigan until April 6, 2010.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent committed an Intentional Program Violation (IPV) by submitting the fraudulent Food Assistance Program (FAP) application on September 3, 2009. Respondent also committed an Intentional Program Violation (IPV) by not reporting her change of physical residence when she left Michigan. Respondent received multiple FAP benefits simultaneously by making a fraudulent statement on the September 3, 2009 application.
8. In accordance with Bridges Administration Manual (BAM) 720 September 3, 2009 to February 28, 2010 has correctly been determined as the over-issuance period associated with the Food Assistance Program (FAP) Intentional Program Violation (IPV).

9. During the Food Assistance Program (FAP) over-issuance period, Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.
10. In accordance with Bridges Administration Manual (BAM) 720 the over-issuance period associated with the Family Independence Program (FIP) Intentional Program Violation (IPV) would begin January 15, 2010.
11. During the Family Independence Program (FIP) over-issuance period, Respondent received a \$ [REDACTED] over-issuance of Family Independence Program (FIP) benefits.
12. This is Respondent's 1st Intentional Program Violation (IPV).
13. The Department's OIG filed a disqualification hearing request on October 5, 2015.

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 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 to .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 to .3015.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

Intentional Program Violation

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

In this case, the Department presented a fraudulent Assistance Application (DHS-1171) that Respondent submitted to the Department prior to the alleged Food Assistance Program (FAP) OI period. This documentation is sufficient to establish that Respondent certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences. It also establishes that Respondent committed a Food Assistance Program (FAP) Intentional Program Violation (IPV) and received multiple FAP benefits simultaneously by making a fraudulent statement on the September 3, 2009 application.

In addition, the Department presented evidence which shows that Respondent also committed an Intentional Program Violation (IPV) by not reporting her change of physical residence when she left Michigan.

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

Food Assistance Program (FAP) In this case, the Department submitted evidence showing that Respondent submitted a fraudulent Assistance Application (DHS-1171) for Food Assistance Program (FAP) benefits. The entire time that Respondent received Food Assistance Program (FAP) benefits as a result of the fraudulent application, is an over-issuance period.

Family Independence Program (FIP) The Department incorrectly alleges that the over-issuance period for Family Independence Program (FIP) benefits is November 1, 2009 to February 28, 2010. The Family Independence Program (FIP) over-issuance was caused by Respondent's intentionally failing to report her change of physical residence when she left Michigan. The Department submitted the transaction history for Respondent's Michigan Electronic Benefit Transfer card. The card was used in Michigan from September 21, 2009 through and including November 26, 2009. The card was first used outside Michigan on December 14, 2009 and exclusively outside Michigan after that date. Within the Department's clear and convincing evidence burden, the evidence submitted only establishes that Respondent was no longer physically in Michigan beginning December 14, 2009. Applying the provisions from Bridges Administration Manual (BAM) 720, cited above, the over-issuance period begins January 15, 2010.

Over-issuance Amount

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive.

Food Assistance Program (FAP) The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$ [REDACTED] of Food Assistance Program (FAP) benefits during the over-issuance period associated with the Food Assistance Program (FAP) Intentional Program Violation (IPV). Respondent was not eligible for any Food Assistance Program (FAP) benefits through Michigan because he was already receiving Food Assistance Program (FAP) benefits through Maryland. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

Family Independence Program (FIP) The Department presented a benefit summary showing that the State of Michigan issued Respondent \$ [REDACTED] of Family Independence Program (FIP) benefits during the over-issuance period associated with the Family Independence Program (FIP) Intentional Program Violation (IPV).

Respondent was not eligible for any Family Independence Program (FIP) benefits through Michigan during the over-issuance period because she was not a physical resident of Michigan. Respondent received a \$ [REDACTED] over-issuance of Family Independence Program (FIP) benefits.

Disqualification

BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications (2015) at page 1, states:

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, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement,) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously.

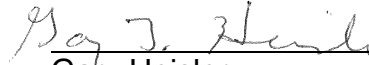
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established by clear and convincing evidence that Respondent committed Intentional Program Violations (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits and a \$ [REDACTED] over-issuance of Family Independence Program (FIP) benefits that the Department is entitled to recoup in accordance with Department policies.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) which resulted in Respondent receiving multiple FAP benefits simultaneously. The Department may disqualify Respondent from receiving Food Assistance Program (FAP) benefits for a period of 10 years in accordance with Bridges Eligibility Manual (BEM) 203.

This is Respondent's 1st Intentional Program Violation (IPV) of the Family Independence Program (FIP). The Department may disqualify Respondent from receiving Family Independence Program (FIP) benefits in accordance with Bridges Administration Manual (BAM) 720.

GH/nr



Gary Heisler
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]