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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: December 9, 2016
MAHS Docket No.: 16-013071
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

**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 [REDACTED], from Detroit, 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 Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance (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 [REDACTED], 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 in [REDACTED] signed by Respondent, she gave a Michigan address and did not indicate she was a Michigan resident and further did not disclose she was receiving FAP benefits at the time of the Michigan FAP application from the State of [REDACTED].
5. Respondent was aware of the responsibility to report changes in her residence to the Department as well receiving FAP benefits from two states at one time.
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 on [REDACTED].
8. The OIG indicates that the time period they are considering the fraud period is [REDACTED], (fraud period).
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 benefits from the State of Illinois.
11. This was Respondent's **first** alleged IPV.
12. A Notice of Hearing was mailed to Respondent at the last known address and **was** returned by the U.S. Post Office as undeliverable; but the Notice was sent to the best available address.

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 January 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 (January 1, 2016), p.7; 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 because she received FAP benefits from the State of Michigan at the same time she received food assistance benefits from the State of [REDACTED]. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3.

In support of its IPV allegations, the Department presented (i) an application Respondent submitted to the Department on [REDACTED], in which she provided a Michigan address as her home address, did not complete the question that she was a Michigan resident and answered “no” to a question asking if she was receiving other food stamps. (Exhibit A, pp. 10, 20); (ii) an email from the State of [REDACTED] Department of Family Services, indicating that she was receiving [REDACTED] FAP from [REDACTED] in response to the Department’s inquiry concerning Respondent, identified by name, birthdate and social security number, showing that Respondent was issued food assistance benefits by the State of [REDACTED] (Exhibit A, pp. 47-48); (iii) a Benefit Summary Inquiry showing that the Department issued FAP benefits to Respondent from [REDACTED], (Exhibit A, p. 54); and (iv) a transaction history showing that Respondent used her Michigan-issued food benefits in [REDACTED] between [REDACTED], (Exhibit A, pp. 43-46).

The evidence presented establishes that Respondent applied for Michigan-issued FAP benefits on [REDACTED], and at that time was also a recipient of [REDACTED] FAP benefits and did not disclose those benefits stating she was not receiving other FAP benefits in her application answers. From [REDACTED] Respondent received Michigan-issued FAP benefits, and during that same period, received food assistance benefits issued by the State of [REDACTED]. The evidence also established that Respondent used her Michigan-issued FAP benefits exclusively in [REDACTED] beginning [REDACTED]. Exhibit A, p. 45. The evidence was sufficient to show, by clear and convincing evidence, that Respondent received food benefits from two different states for several concurrent months.

Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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. Clients are disqualified

for ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, and, for all other IPV cases involving FAP, 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. 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt food assistance benefits from two states at the same time. In order to apply the 10-year disqualification for concurrent receipt of benefits, the Department must establish that the client made fraudulent statements regarding identity or residency which has been established by the evidence presented. Accordingly, Respondent is subject to a 10-year disqualification from receipt of FAP benefits. BEM 720, p. 16.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a \$ [REDACTED] OI during the fraud period based on Respondent's concurrent receipt of benefits. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she received food assistance benefits issued by the State of [REDACTED] BEM 222, p. 3. Further, Respondent was eligible for FAP benefits from the State of Michigan only if she was residing in Michigan. BEM 220 (January 2016), p. 1. Based on her transaction history, Respondent was not residing in Michigan during a large portion of the fraud period.

The benefit summary issuance presented by the Department showed that during the fraud period, Respondent received \$ [REDACTED] in FAP benefits (Exhibit A, p. 54). Because Respondent was not eligible for concurrent receipt of benefits, and lacked Michigan residency during a portion of the fraud period, she was not eligible for any of the FAP benefits issued during the fraud period.

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for over issued FAP benefits between [REDACTED].

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 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.

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

LMF/jaf



Lynn M. Ferris
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]

[REDACTED]