



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 27, 2016
MAHS Docket No.: 16-005579
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 October 18, 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?

FINDINGS OF FACT

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

1. On November 5, 2013, Respondent submitted an online application for Food Assistance Program (FAP) benefits through Michigan. In the application Respondent indicated that he was not blind or disabled. Respondent electronically signed the affidavit in his online Assistance Application (DHS-1171) certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
2. On May 2, 2014 Respondent began using Michigan Food Assistance Program (FAP) benefits in Virginia. Respondent made 4 separate purchases with his Michigan EBT card between May 2 and 10, 2014. The transactions totaled \$ [REDACTED] and took his Michigan EBT card balance to \$ [REDACTED]
3. On May 13, 2014, Respondent submitted an application for Food Assistance Program (FAP) benefits through Virginia. Respondent gave a Virginia address as his physical address and his mailing address. He listed his living arrangement as homeless. He listed Michigan as his previous state of residence and that he had received Food Assistance in Michigan. He also stated that he expected to receive no money during the month. Respondent electronically signed the affidavit in the application certifying that the information provided was true.
4. On June 6, 2014, Respondent's Michigan EBT card was loaded with his June 2014 Food Assistance Program (FAP) benefits from Michigan.
5. On June 9, 2014, Respondent used his Michigan EBT card for a \$ [REDACTED] transaction.
6. Respondent received multiple FAP benefits simultaneously from Michigan and Virginia during the months of June, July, August and September 2014.
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report a change of physical residence to Virginia and continuing to receive and use Michigan Food Assistance Program (FAP) benefits when no longer a physical resident of Michigan and no longer eligible for benefits through Michigan.
9. Respondent received multiple FAP benefits simultaneously by fraudulently representing to the State of Virginia that he was not receiving FAP benefits from Michigan.
10. June 1, 2014 to September 30, 2014 has correctly been determined as the over-issuance period associated with this Intentional Program Violation (IPV).

11. During the over-issuance period, Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.
12. This is Respondent's 1st Intentional Program Violation (IPV).
13. The Department's OIG filed a disqualification hearing request on January 19, 2016.

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 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 an Assistance Application (DHS-1171) that Respondent submitted to the Department prior to the alleged 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.

The Department also submitted Respondent's Electronic Benefit Transfer Card transaction record which shows that Respondent began using Michigan Food Assistance Program benefits outside Michigan on May 2, 2014 and that between May 2 and 10, 2014 Respondent made transactions totaling \$ [REDACTED] and took his Michigan EBT card balance to \$ [REDACTED]

The Department also submitted the May 13, 2014 application Respondent submitted to Virginia. In that application Respondent fraudulently represented himself as a resident of Virginia when he was still representing himself as a Michigan resident and receiving FAP benefits through Michigan.

Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report a change of physical residence to Virginia and continuing to receive and use Michigan Food Assistance Program (FAP) benefits when no longer a physical resident of Michigan and no longer eligible for benefits through Michigan. Respondent also made a fraudulent representation regarding his residence in order to receive multiple Food Assistance Program benefits simultaneously.

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.

In this case, the Department submitted evidence showing that Respondent began using Michigan Food Assistance Program benefits outside Michigan and submitted a fraudulent application to the State of Virginia in order to receive multiple Food Assistance Program benefits simultaneously. Any period of benefit receipt following the fraudulent application is an over-issuance period.

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. The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$█ of Food Assistance Program (FAP) benefits during the over-issuance period. Once Respondent was no longer a physical resident of Michigan, they were not eligible for any Michigan Food Assistance Program benefits. Respondent received a \$█ over-issuance of Food Assistance Program benefits during the over-issuance period.

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.

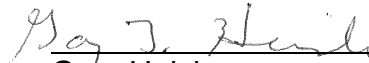
DECISION AND ORDER

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 an Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP). The Department has established that Respondent made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. The Department may disqualify Respondent from receiving Food Assistance Program (FAP) benefits for a period of ten years in accordance with Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are UPHELD.

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]