



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.: 16-010985
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [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 benefits for Food Assistance?

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 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. Respondent **was** aware of the responsibility to report changes in residence.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (4 months) (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
10. A Notice of Hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. Post Office as undeliverable.

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.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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), p. 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 (May 1, 2014), p. 7; BAM 720, (October 1, 2014), 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.

In this case, the Department alleges that the Respondent failed to report his change in residence when he accepted a job with [REDACTED] in September 2015 in [REDACTED]. At no time relevant to this matter was any evidence presented that the Respondent reported his change in residence to the Department. The Department seeks the impositions of an IPV against the Respondent due to his failure to report his address change to an out-of-state location, thereby allowing Respondent to continue to receive FAP benefits he was no longer entitled to receive as he was no longer living in Michigan. The Department presented the Respondent's out-of-state usage records, which demonstrated that Respondent used his FAP benefits in several states beginning [REDACTED]. From [REDACTED], the Respondent resided in [REDACTED] and used his FAP benefits throughout that period. Exhibit A, pp. 42-48.

The Petitioner filed an application for FAP on [REDACTED], and completed a Redetermination on [REDACTED], where he reported no change in address. At that time, the Respondent was advised that he was to report changes in circumstances within 10 days. In addition, the Department sent the Respondent a Notice of Case Action dated [REDACTED], with a personal note addressed to the Respondent indicating his ongoing FAP benefits were approved and advised him "remember to **report any changes to your address**, people in the home, or income within 10 days...." Exhibit A, p. 36.

At the hearing, the Department's evidence showed that Respondent used his FAP benefits issued by the State of Michigan exclusively in [REDACTED] and [REDACTED] between [REDACTED]. Department policy provides that to be eligible, a person must be a Michigan resident. BEM 220 (July 1, 2014), p. 1. In addition, based upon the evidence presented, the Respondent did not qualify for a temporary absence as the Respondent's absence lasted for more than 30 days; and the Respondent then was working out of state. BEM 212 (July 1, 2014), p. 3.

In addition, the Respondent also began employment with [REDACTED] commencing [REDACTED] and continued to work for [REDACTED] through [REDACTED]. The Respondent continued to use his FAP benefits out of state in [REDACTED] through [REDACTED]. Exhibit A, p. 48. Based upon the evidence presented, it is determined that the Department has established by clear and convincing evidence that the Respondent was no longer living in Michigan and failed to report that fact to the Department as well as he then became employed with [REDACTED] which further established that he was no longer a Michigan resident or living in Michigan. Thus, the Department is entitled to a finding that Respondent committed an IPV of his FAP 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; BEM 708 (April 1, 2014), p. 1. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, because it is determined that the Respondent committed an IPV of his FAP benefits by failing to report his change in residence, the Department is entitled to the imposition of a one-year disqualification of the Respondent from receiving FAP benefits as this is the Respondent's first IPV.

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 the OI is the benefit amount the client actually received, minus the amount the client was eligible to receive. BAM 715 (July 1, 2014), p. 1;

In this case, the Department presented a Benefit Summary Inquiry showing FAP issuances totaling \$ [REDACTED] between [REDACTED]. The Department is seeking an OI in FAP benefits for a total of \$ [REDACTED].

In support of its FAP OI case, the Department presented Respondent's FAP transaction history showing his use of FAP benefits issued by the State of Michigan exclusively out of state beginning [REDACTED]. Respondent became ineligible for benefits once his FAP transaction history showed he was using his Michigan-issued FAP benefits outside Michigan for more than 30 days. See BEM 220, (July 1, 2014), pp. 2-3. Therefore, he became ineligible for FAP benefits on [REDACTED]. The Department correctly determined that the OI period should begin [REDACTED]. Thus, the Department is entitled to recoup \$ [REDACTED] in FAP benefits for the FAP issued to Respondent during this period.

DECISION AND ORDER

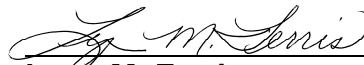
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 disqualified from receipt of FAP for a period of **12 months**.

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]

Via email

[REDACTED]