



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 12, 2016
MAHS Docket No.: 16-011211
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

**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 September 26, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] 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 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 FAP benefits for ten years?

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 committing 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 signed by Respondent on [REDACTED], Respondent provided a Michigan address.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
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].
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 [REDACTED].
11. This was Respondent's first alleged IPV.
12. 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), 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.

Prior to October 1, 2014, 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 \$1000 or more, **or**
 - the total OI amount is less than \$1000, **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 (May 2014), p. 12.

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 2014), 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she received Michigan-issued FAP benefits at the same time she was issued FAP benefits in [REDACTED]. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (March 2013), p. 2. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on [REDACTED], in which she acknowledged that she received the Information Booklet advising of “Things You Must Do” (which explained reporting change circumstances, including employment).

The Department testified that it sent correspondence to the State of [REDACTED] inquiring as to whether Respondent received dual assistance. The Department testified that it was instructed to call. Agent [REDACTED] testified that she personally called a representative with the State of [REDACTED] and learned that Respondent received FAP benefits in [REDACTED] from October 2014 through March 2015. The application presented by the Department was submitted prior to the start of the fraud period. While the evidence presented seems to support a finding that Respondent failed to report her change in residency to the Department within 10 days, the Department did not provide any evidence that Respondent reapplied for FAP benefits or that she affirmatively communicated false information to the Department. Accordingly, it is found that the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 16. 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.

Additionally, a ten-year disqualification for concurrent receipt of benefits will be found if fraudulent statements were made regarding identity or residency. BAM 720, p. 16. The

Department failed to provide any evidence to support a finding that Respondent made fraudulent statements relating to her identity or residency. Therefore, it is found that the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a ten year disqualification under the FAP program.

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. At the hearing, the Department established that the State of Michigan issued a total of [REDACTED] in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

As previously stated, the Department also presented evidence from the State of North Carolina which revealed that Respondent received FAP benefits from October 2014 through March 2015, as well as the benefits issuance summary which revealed that Respondent received Michigan FAP benefits during the same months. While it has been found that the Department failed to establish that Respondent's acts were intentional, the evidence provided at the hearing demonstrated that Respondent simultaneously received benefits from Michigan and [REDACTED] from October 2014 through March 2015. Therefore, the Department has established it is entitled to recoup the [REDACTED] in FA benefits it issued to Respondent during the fraud 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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program FAP benefits in the amount of [REDACTED].

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to a ten year disqualification from FAP benefits.

JM/hw



Jacquelyn A. McClinton

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]

Respondent

[REDACTED]