



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 21, 2016
MAHS Docket No.: 16-015382
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 December 5, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED] (Respondent).

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 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 September 14, 2016, 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 had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is July 19, 2015 to November 8, 2015 (fraud period).
6. The Department alleges that Respondent trafficked [REDACTED] in FAP benefits.
7. This was Respondent's first alleged IPV.
8. 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), 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 (January 2016), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

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 2016), 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.

BAM 700 defines trafficking as:

- The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.
- Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food.

BAM 700, p. 2. Moreover, FAP trafficking includes fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (January 2015), p. 3.

Title 7 of CFR 274.7(a), eligible food, states:

Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits.

Additionally, a person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804 (July 2014), p. 1.

In this case, the evidence indicated Respondent's FAP group size was one during the alleged fraud period and there were no other authorized users, which meant Respondent was the only eligible group member to use her Electronic Benefit Transfer (EBT) card. However, the Department alleged that Respondent's FAP transaction history showed usage during the time she was incarcerated. As such, the Department argued that Respondent trafficked her FAP benefits because she did fraudulently use, transfer, alter, acquire, or possess coupons, authorization cards, or access devices other than authorized by the Food Stamp Act. See BEM 203, p. 3 and Exhibit A, p. 1.

First, the Department presented evidence that Respondent was incarcerated from [REDACTED] to [REDACTED] which was during the alleged fraud period. Exhibit A, p. 9.

Second, the Department presented Respondent's FAP transaction history. Exhibit A, pp. 10-11. The FAP transaction history showed that from [REDACTED] to [REDACTED], Respondent's FAP benefits were used, while she was incarcerated. See Exhibit A, pp. 10-11.

At the hearing, Respondent argued and/or asserted the following: (i) she did not dispute that she was incarcerated from [REDACTED] to on or about [REDACTED] (i)

before she was incarcerated, she left her EBT card in her purse and when she came back home, the EBT card was in her purse; (iii) she does not know who used her EBT card; (iv) she never provided anyone her personal identification number (PIN) to use her EBT card nor was the PIN written down; (v) her PIN is not complicated, e.g. a child's birthday, thus, someone could have used it possibly; (vi) her husband (separated) was at her home during the time of her incarceration, but does not want to point fingers on who might have possibly used her EBT card because she is unsure; (vii) she thought that her FAP benefits closed at the time of her incarceration because she went to see a doctor at the jail and discovered that her MA benefits had closed; and (viii) she acknowledged that she failed to report to the Department that she was incarcerated.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department's position is that Respondent committed an IPV of her FAP benefits because she trafficked her benefits by allowing someone to use her EBT card while she was incarcerated. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV," including an IPV based on trafficking. BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that she did not intend to traffick her benefits; thus, the undersigned Administrative Law Judge (ALJ) finds that she did not commit a violation of the FAP program. Instead, the evidence established that Respondent committed client error when she failed to report her incarceration to the Department. See BAM 715 (January 2016), p. 1. Nonetheless, the evidence presented does not establish by clear and convincing evidence that Respondent trafficked her 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 2014), p. 1. Clients are disqualified for ten 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent trafficked her FAP benefits. Nevertheless, the Department can still proceed with recoupment of the OI in this case because Respondent acknowledged that she failed to notify the Department of her incarceration. This type of error by Respondent is known as “client error.”

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

Policy further states that other changes must be reported within 10 days after the client is aware of them. BAM 105 (July 2015), p. 11. These include, but are not limited to, changes of address and shelter cost changes that result from the move. BAM 105, p. 11.

Based on the above policy, a client error is present because Respondent failed to notify the Department of her incarceration within 10-days after she became aware of it. See BAM 105, p. 11 and BAM 715, p. 1. The evidence established that Respondent was incarcerated during the OI period and therefore, she was not eligible for FAP benefits.

Applying the overissuance period standards, the appropriate OI period begin date is August 1, 2015, and not July 19, 2015, as alleged by the Department. See BAM 715, pp. 4-5 and BAM 804, p. 1. Policy states that a person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804, p. 1. Respondent was incarcerated on July 1, 2015; thus, she would be ineligible for FAP benefits beginning August 1, 2015. BAM 804, p. 1 and see also BAM 715, pp. 4-5 (OI begin date policy: the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period).

Additionally, 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. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from August 2015 to November 2015, which totaled [REDACTED]. See Exhibit A, p. 12. However, the Department is only alleging an OI of [REDACTED] in this case. See Exhibit A, p. 3. As such, the Department is only entitled to recoup the amount it is requesting, which is [REDACTED] for the period of August 2015 to November 2015. See BAM 715, pp. 6-7 (Overissuance amount).

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/collection procedures for the amount [REDACTED] for the period of August 2015 to November 2015, in accordance with Department policy, less any amount already recouped and/or collected.

EF/tm



Eric J. Feldman
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]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

CC:

[REDACTED]
[REDACTED]