



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: January 27, 2017
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 [REDACTED], 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 FIP and 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 FIP benefits for 12 months and 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 committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FIP and FAP benefits.
3. Respondent was a recipient of FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using FAP benefits outside of the State of Michigan beginning on [REDACTED].
7. The OIG indicates that the time period they are considering the fraud period is [REDACTED] [REDACTED] (FIP fraud period).
8. During the FIP fraud period, Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FIP benefits in the amount of [REDACTED].
10. The OIG indicates that the time period they are considering the FAP fraud period is [REDACTED] [REDACTED] (FAP fraud period).
11. During the FAP 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.
12. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
13. During the alleged FAP fraud period, Respondent was issued FAP benefits from the State of Illinois.
14. This was Respondent's first alleged IPV of both programs.
15. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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 October 1, 2014, 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;

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.

FIP

In this case, the Department alleges that Respondent committed an IPV of her FIP benefits because she failed to notify the Department that she no longer resided in Michigan, but continued to receive and use Michigan-issued FIP benefits while out of state. To be eligible for FIP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (April 2011), p. 1. A person is considered a resident while living in Michigan for purpose other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than 30 days is not eligible for benefits issued by the State of Michigan. BEM 212 (September 2010), p. 2.

The Department provided an application for benefits completed by Respondent on [REDACTED] in which she acknowledged her responsibility to report changes within 10 days. Respondent completed FAP transactions in Michigan until [REDACTED] which indicates that she was a Michigan resident at the time she applied for FIP benefits on

████████████████████ application was completed prior to the beginning of the FIP fraud period.

The Department did not provide any evidence that Respondent reapplied for FIP benefits or that she affirmatively communicated false information to the Department during the FIP fraud period. As outlined below, Respondent may have not been a resident of Michigan at the time she received FIP benefits in July 2011. However, this is only sufficient to establish an overissuance and not an IPV relating to the receipt of FIP benefits. It is therefore found, that the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FIP benefits.

FAP

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 Illinois. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (July 2011), p. 2. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on ██████████ in which she acknowledged that she received the Information Booklet advising of “Things You Must Do”, which explained reporting change circumstances.

The Department presented correspondence from the State of Illinois which revealed that Respondent received FAP benefits in Illinois from ██████████. The Department further presented a benefit issuance summary relating to Respondent’s Michigan-issued FAP benefits which indicated that Respondent received Michigan-issued FAP benefits during the same period. In support of its assertion that Respondent committed an IPV of her FAP benefits, the Department submitted an application dated ██████████ in which she stated that she was a Michigan resident and was not receiving benefits from any other state. On ██████████, Respondent submitted a Semi-Annual Contact Report in which a Michigan address was pre-printed on the form. Respondent did report any change in address at the time she submitted the form.

A review of Respondent’s FAP transaction usage history reveals that she used her Michigan-issued FAP benefits primarily in Illinois beginning ██████████ through ██████████. During this period, Respondent only used her Michigan issued FAP benefits in Michigan on ██████████, ██████████, and ██████████. Given that Respondent completed purchases in Illinois on ██████████, it does not appear that Respondent was located in Michigan at the time she submitted the ██████████ online application. Likewise, it appears that Respondent was in Michigan just long enough to complete and submit the ██████████ Semi-Annual Contact Report. Accordingly, it is found that the Department has established 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 IPV disqualifies that client from receiving program benefits. BAM 720 (January 2011), p. 12. 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. 12.

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. 13.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FIP benefits. Accordingly, Respondent is not subject to a disqualification under the FIP program. However, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a ten year disqualification under the FAP program for the concurrent receipt of benefits.

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 ██████ in FIP benefits to Respondent during the FIP fraud period. The Department alleges that Respondent was eligible for ██████ in FIP benefits during this period. Likewise, the Department established that the State of Michigan issued a total of ██████ in FAP benefits to Respondent during the FAP fraud period. The Department alleges that Respondent was eligible for ██████ in FAP benefits during this period

In support of its contention that Respondent was overissued FIP and FAP benefits, the Department presented Respondent's FAP transaction history showing that she used her FAP benefits issued by the State of Michigan primarily in Illinois from ██████ through ██████. As discussed above, Respondent was no longer eligible for FIP or FAP benefits after she resided outside Michigan for more than 30 days. There is no evidence that Respondent returned to Michigan after she began using her FAP benefits out of state. By ██████ it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p 2. Therefore, the Department has established it is entitled to recoup the ██████ in FIP benefits and ██████ in FAP benefits it issued to Respondent.

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:

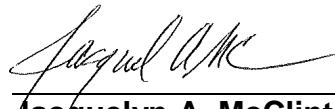
1. The Department has not established by clear and convincing evidence that Respondent committed an IPV of FIP benefits.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.
3. Respondent did receive an OI of program FIP benefits in the amount of [REDACTED] for the period of [REDACTED].
4. Respondent did receive an OI of program FAP benefits in the amount of [REDACTED] for the period of [REDACTED].

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

It is FURTHER ORDERED that Respondent is not subject to a disqualification from FIP benefits.

It is FURTHER ORDERED that Respondent is 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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]