



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: January 17, 2017
MAHS Docket No.: 16-011303
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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on December 20, 2016, from Lansing, Michigan. The Department was represented by Regulation Agent [REDACTED], of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUES

Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?

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. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits through Michigan.

2. Beginning February 24, 2014, Respondent's Michigan Food Assistance Program (FAP) Electronic Benefit Transfer Card (EBT) was used in Arkansas. Respondent's EBT card was continually used in Arkansas until June 3, 2014.
3. Beginning June 6, 2014, Respondent's Michigan Food Assistance Program (FAP) Electronic Benefit Transfer Card (EBT) was used in Georgia. Respondent's EBT card was continually used in Georgia until April 20, 2016.
4. On July 24, 2014, Respondent signed the affidavit in an 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. In the application Respondent represented himself as a physical resident of Michigan.
5. On March 27, 2015, Respondent signed the affidavit in an Assistance Application (DHS-1171) certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences. In the application Respondent represented himself as a physical resident of Michigan.
6. Respondent had no apparent physical or mental impairment that would limit his understanding or ability to comply with the Food Assistance Program (FAP) requirements and rules.
7. Evidence in this record indicates that Respondent was a physical resident of Michigan during the period of time at issue in this case.
8. Respondent committed an Intentional Program Violation (IPV) by giving his Michigan Food Assistance Program (FAP) Electronic Benefit Transfer Card (EBT) and Personal Identification Number (PIN) to another person who used the Michigan FAP benefits in other states.
9. Respondent's Intentional Program Violation (IPV) in this case, is best classified as trafficking of Food Assistance Program (FAP) benefits.
10. This is Respondent's 1st Intentional Program Violation (IPV).

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 .3011.

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 which they knew would result in receiving assistance s/he was not eligible for.

In this case, the Department presented two Assistance Applications (DHS-1171) that Respondent submitted to the Department prior to the alleged over-issuance period. These application are sufficient to establish that Respondent was aware of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

The Department submitted evidence which shows that Respondent's Michigan Food Assistance Program (FAP) Electronic Benefit Transfer Card (EBT) was used exclusively outside Michigan from February 21, 2014 until April 20, 2016. Evidence in the record also shows that Respondent was a physical resident of the State of Michigan while his Michigan Food Assistance Program (FAP) Electronic Benefit Transfer Card (EBT) was being used in other states.

Respondent committed an Intentional Program Violation (IPV) by giving his Michigan Food Assistance Program (FAP) Electronic Benefit Transfer Card (EBT) and Personal Identification Number (PIN) to another person. Respondent's action was an intentional violation of the Food Assistance Program (FAP) rules and requirements. This IPV is best classified as trafficking of Food Assistance Program (FAP) benefits.

Over-issuance Amount

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) provides:

FAP Trafficking

The OI amount for trafficking-related IPV's is the value of the trafficked benefits as determined by:

The court decision.

The individual's admission.

In this case the Department submitted evidence which shows that Respondent's Michigan Food Assistance Program (FAP) Electronic Benefit Transfer Card (EBT) was used exclusively outside Michigan for transactions totaling \$ [REDACTED].

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), 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.

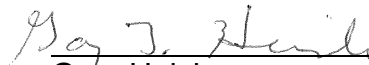
DECISION AND ORDER

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) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

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]