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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 31, 2017
MAHS Docket No.: 16-013076

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

**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 January 24, 2017, from Lansing, Michigan.

The Department was represented by [REDACTED] of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted [REDACTED] exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

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 FAP benefits for 10 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 June 21, 2016, 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 program benefits for 10 years.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in his residence to the Department as evidenced by his signature on the May 13, 2014, and May 14, 2015, FAP applications. [Dept. Exh. 10-42; 43-70].
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 15, 47].
6. Beginning January 12, 2015, Respondent was employed at [REDACTED] according to the Work Number. Respondent listed his address as [REDACTED]. [Dept. Exh. 72-73].
7. The [REDACTED] reported that Respondent began receiving FAP beginning February 10, 2016 and was currently receiving [REDACTED] a month. [Dept. Exh. 76].
8. On June 7, 2016, the Recoupment Specialist spoke with Respondent by telephone. Respondent admitted to moving to [REDACTED] a approximately one and a half years ago. Respondent's current address was [REDACTED]. [Dept. Exh. 78].
9. Respondent's FAP Purchase History showed Respondent used his Michigan FAP benefits all but once, solely in [REDACTED], from October 27, 2014 through March 21, 2015, and from July 13, 2015 through March 19, 2016, except for five purchases in [REDACTED]. [Dept. Exh. 83-85; 87-91].
10. The OIG indicated that the time period they are considering the fraud period is September 1, 2015 through April 30, 2016 and from March 1, 2015 through March 31, 2015. [Dept. Exh. 3].
11. During the alleged fraud period of September 1, 2015 through April 30, 2016, Respondent was issued [REDACTED] in FAP benefits from the State of Michigan. [Dept. Exh. 80].

12. During the alleged fraud period of March 1, 2015 through March 31, 2015, Respondent was issued [REDACTED] benefits from the State of Michigan. [Dept. Exh. 79].
13. Respondent was receiving duplicate FAP benefits from the State of Indiana during the fraud period of March 1, 2015 through March 31, 2015.
14. This was Respondent's first alleged IPV.
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 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:

- 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 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, p 12-13 (1/1/2016).

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 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 record evidence clearly shows that Respondent was residing in [REDACTED] and receiving Food Assistance Program benefits from the [REDACTED] from March 1, 2015 through March 31, 2015. The Department has established by clear and convincing evidence that Respondent intentionally withheld and misrepresented information that he was actually living in Indiana when he applied for Michigan FAP benefits in 2015, for the purpose of establishing and maintaining Michigan FAP benefits. Further, the evidence shows that Respondent used his Michigan FAP benefits almost exclusively in Indiana from October 27, 2014 through March 21, 2015, and from July 13, 2015 through March 19, 2016, without informing the Department that he was living in [REDACTED]. Therefore, the Department has established an Intentional Program Violation.

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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 17.

Clients who commit an Intentional Program Violation are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to Medicaid or the Food Assistance Program. BAM 720, p 13.

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 18.

In this case, Respondent received concurrent Food Assistance Program benefits from the states of Michigan and ██████, from March 1, 2015 through March 31, 2015. Because Respondent received concurrent Food Assistance Program benefits from the states of ██████ and Michigan, Respondent is disqualified from receiving Food Assistance Program benefits for 10 years.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1 (1/1/2016).

In the above captioned matter, Respondent not only received concurrent benefits from the states of Indiana and Michigan, but he also used his Michigan Food Assistance Program benefits almost exclusively in Indiana from October 27, 2014 through March 21, 2015, and from July 13, 2015 through March 19, 2016, without informing the Department that he was not living in Michigan.

Respondent's signature on the FAP applications dated May 15, 2014 and May 14, 2015, certify that he was aware that fraudulent participation in FAP could result in criminal, civil or administrative claims. Because of Respondent's failure to report that he was living in ██████ and using his Michigan FAP benefits solely outside the state of Michigan, he received an overissuance and the Department is entitled to recoup ██████ for the fraud period of September 1, 2015 through April 30, 2016 and ██████ for the fraud period of March 1, 2015 through March 31, 2015 for a total of ██████.


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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive a FAP overissuance of benefits in the amount of ██████.

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

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.



Vicki A. Armstrong

Vicki Armstrong
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

