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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



Date Mailed: January 30, 2017
MAHS Docket No.: 16-013300
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent 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 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 Food Assistance?

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 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 **was** aware of the responsibility to report change of address and moving out of state.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
7. During the 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
10. A Notice of Hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. 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 (1/1/16), 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 (May 1, 2014), p. 7; BAM 720, (October 1, 2014) p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 11.

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.

To be eligible to receive FAP from the State of Michigan, a person must be a Michigan resident. BEM 220, (July 1, 2014), p. 1. A person is considered a resident while living in Michigan for any purpose other than vacation. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (July 1, 2014), pp. 2-3.

In this case, the Department presented evidence that Respondent was aware of her reporting requirements when she applied initially for FAP benefit on [REDACTED], and applied again in another application dated [REDACTED]. Exhibit A, pp. 10-40 and p. 55. Thereafter, the Respondent left Michigan and moved to [REDACTED] in [REDACTED] and began to use her Michigan FAP benefits out of state in [REDACTED] beginning [REDACTED]. The Respondent continued to use her Michigan FAP benefits in [REDACTED] until [REDACTED], and failed to advise the State of Michigan she had moved. Exhibit A, pp. 74-76. The Department also presented a verification of employment from Petitioner's [REDACTED] employer, which indicated that she began employment on [REDACTED] [REDACTED] Exhibit A, p. 83. The Department seeks an IPV due to Respondent's no longer being a Michigan resident and asserts as such, Respondent was no longer entitled to receive FAP from Michigan. The Respondent at no time during the fraud period reported that she had left Michigan and had begun employment in [REDACTED]

At no time did the Respondent report a change in address. Additionally, the Respondent began employment in [REDACTED] on [REDACTED], listing a [REDACTED] address with the employer. Exhibit A, p. 83. This employment also began and continued during the fraud period. A review of the verification of employment in [REDACTED] indicated that the Respondent had a [REDACTED] address. Based upon the Electronic Benefits Transfer (EBT) FAP transaction history, the Respondent continued to use her FAP benefits after beginning her employment in [REDACTED]

Based upon the evidence presented, the Department has established that the Respondent committed an IPV of her FAP benefits when she failed to report her change of address, moved out of state and began employment without at any time advising the Department of these changes. The evidence presented is sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits. 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). The Department presented evidence to establish Respondent's intent to maintain FAP benefits during the alleged IPV usage. The Department presented evidence that Respondent was working during the alleged fraud period, and the employment verification indicated that she had a [REDACTED] address. The employment verification showed that Respondent no longer resided in Michigan

and intentionally withheld information concerning an out-of-state move during the alleged fraud period.

Thus, it is determined that the Department has established by clear and convincing evidence that Respondent committed an IPV of 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. 2; Clients are disqualified for ten years for an 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. 1. 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. 16.

In this case, the Department has established an IPV was committed by Petitioner, and thus, is entitled to a finding of disqualification from receipt of FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months as this is Respondent's first IPV. BAM 720, p. 16.

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. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (October 1, 2014), p. 6; BAM 705 (May 2014), p. 6.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, (7/1/14), p. 1. At the hearing, the Department presented an FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from [REDACTED]. In the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan and was not eligible for FAP benefits issued by the Department.

At the hearing, the Department presented Respondent's FAP transaction history that established that her history showed that from [REDACTED], Respondent used FAP benefits issued by the State of Michigan out of state in [REDACTED].

To be eligible to receive FAP a person must be a Michigan resident. BEM 220, p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, (July 1, 2014), p. 1.

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits. Moreover, the FAP transaction history showed that Respondent

did not reside in Michigan. Thus, she was not eligible for FAP benefits and was over issued FAP benefits for any period she was ineligible to receive FAP benefits.

Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the RS, whichever is later. BAM 720, p. 7. To determine the first month of the OI period the Department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 720, p. 7. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7.

Applying the above standard and in consideration of the out-of-state use that began on [REDACTED], the Department determined that the OI period began on [REDACTED]. It is found that the Department applied the appropriate OI begin date. In establishing the OI amount, the Department presented a Benefit Summary Inquiry showing that Respondent was issued FAP benefits by the State of Michigan from [REDACTED], in the amount of \$ [REDACTED]. Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued to Respondent.

DECISION AND ORDER

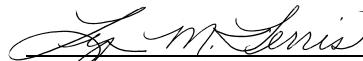
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED].

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

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.

LMF/jaf



Lynn M. Ferris

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]

[REDACTED]