



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: February 1, 2017
MAHS Docket No.: 16-013428
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 January 31, 2017, 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. When Respondent was issued his Electronic Benefit Transfer (EBT) Card he received notification of the Food Assistance Program (FAP) rules, regulations and requirements.

2. On December 7, 2013, Respondent began using his Michigan Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) Card in Tennessee. The Michigan Food Assistance Program (FAP) benefits were used outside of Michigan until June 12, 2015.
3. On July 9, 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.
4. On August 20, 2015, Respondent continued using his Michigan Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) Card in Tennessee. The Michigan Food Assistance Program (FAP) benefits were used outside of Michigan until May 18, 2016.
5. On December 10, 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.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill the reporting requirements. While Respondent was disabled, the two applications show that he was attending college.
7. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report a change of physical residence to Tennessee and continuing to apply for, receive and use Michigan Food Assistance Program (FAP) benefits when no longer a physical resident of Michigan and no longer eligible for benefits through Michigan.
8. In accordance with Bridges Administration Manual (BAM) 720 May 1, 2014 to April 31, 2016 has been determined as a correct over-issuance period associated with this Intentional Program Violation (IPV).
9. During the over-issuance period, Respondent received a \$ [REDACTED] over-issuance 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, when Respondent was issued his Electronic Benefit Transfer (EBT) Card he received notification of the Food Assistance Program (FAP) rules, regulations and requirements. The Department also presented two Assistance Applications (DHS-1171) that Respondent submitted to the Department during the alleged over-issuance period. This evidence is sufficient to establish that Respondent was misrepresenting himself as a Michigan resident and aware of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

The Department submitted evidence showing that Respondent began using Michigan Food Assistance Program benefits outside Michigan beginning December 7, 2013. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report a change of physical residence to Tennessee and continuing to apply for, receive and use Michigan Food Assistance Program (FAP) benefits when no longer a physical resident of Michigan and no longer eligible for benefits through Michigan.

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance 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 it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

7 CFR § 273.16 Disqualification for intentional Program violation

(e) Disqualification Hearings (8) Imposition of disqualification penalties (i) states:

If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

In this case, the Department submitted evidence showing that Respondent began using Michigan Food Assistance Program benefits outside Michigan beginning December 7, 2013. Applying these requirements, the over-issuance period could begin May 1, 2014.

Over-issuance Amount

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented a benefit summary showing that the State of Michigan issued a total of \$ [REDACTED] in Food Assistance Program benefits to Respondent during the over-issuance period. Once Respondent was no longer a physical resident of Michigan, they were not eligible for any Michigan Food Assistance Program benefits. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program benefits during the over-issuance period.

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.

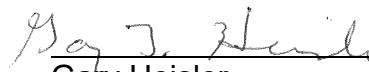
DECISION AND ORDER

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]