



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.: 16-016858
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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on January 31, 2017, from Lansing, 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).

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV).
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) by making a fraudulent statement or representation regarding her identity or residence in order to receive multiple Food Assistance Program benefits simultaneously?
3. 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. On May 13, 2015, Respondent submitted an application for Food Assistance Program (FAP) benefits through Florida. Respondent received benefits through Florida from May 2015 through August 2016.
2. On October 29, 2015, Respondent submitted an application for Food Assistance Program (FAP) benefits through Michigan. The Department only submitted a portion of the application into evidence. Department's Exhibit A pages 10-26. The evidence does not contain pages seen in other online applications where an applicant is asked "Are you getting FoodShare or Food Stamps this month?" or "Moved or received assistance from another state?"
3. Respondent was issued Food Assistance Program (FAP) benefits through Florida and Michigan simultaneously from November 2015 through August 2016.
4. There is no evidence in this record which shows that Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple Food Assistance Program benefits simultaneously.
5. There is no evidence in this record which shows that Respondent did not report receipt of Food benefit through Florida to Michigan when she applied in Michigan.
6. There is no evidence in this record which shows that Respondent used either the Food assistance issued through Florida or Michigan.
7. The Department failed to meet the evidentiary burden of showing that Respondent committed an Intentional Program Violation (IPV) or received an over-issuance of Food Assistance Program (FAP) benefits.

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.

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 they knew would result in receiving assistance they were not eligible for.

Bridges Eligibility Manual 222 Concurrent Receipt of Benefits provides that a person cannot receive FAP in more than one state for any month. It also provides that an out-of-state inquiry be made whenever an applicant arrives from another state within 30 days before application and/or presents current identification from another state.

Bridges Eligibility Manual 203 Criminal Justice Disqualifications, provides that a person is disqualified for a period of 10 years if they make a fraudulent statement or representation regarding their identity or residence in order to receive multiple FAP benefits simultaneously.

The evidence in this record does not show what, if any, information Respondent provided to the Department when she applied for Food Assistance Program (FAP)

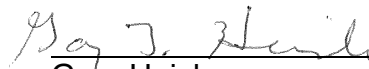
benefits in Michigan. Neither does the evidence show if Respondent did or did not use Food benefits issued through Florida or Michigan. These evidentiary deficiencies mean that the Department has not established that Respondent committed an Intentional Program Violation (IPV) or that she received an over-issuance of Food Assistance Program (FAP) benefits.

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 NOT established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). Neither has the Department established that Respondent received an over-issuance of benefits.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are REVERSED. The Department may not impose any disqualification or take steps to recoup any benefits issued to Respondent.

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

Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]