



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 16, 2017
MAHS Docket No.: 16-018665
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 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 February 1, 2017, from Lansing, Michigan.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 128 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 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?
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 Office of Inspector General filed a hearing request on December 27, 2016, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an Intentional Program Violation.
2. The Office of Inspector General has requested that Respondent be disqualified from receiving Food Assistance Program benefits for 10-years.
3. On August 5, 2015, Respondent applied for Food Assistance Program benefits and listed a post office box in [REDACTED], Michigan, as her residence. [Dept. Exh. 12-444].
4. Respondent was aware of the responsibility to report changes in her residence to the Department. [Dept. Exh. 28-44].
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 16].
6. According to the FAP Purchase History, Respondent used her Michigan FAP benefits solely in the State of Mississippi beginning September 11, 2015, through May 22, 2016, but for a couple of purchases in the State of Louisiana. [Dept. Exh. 45-59].
7. On November 30, 2016, the Department received information from the Department of Human Services in the State of Mississippi that indicated that Respondent received FAP benefits from Mississippi beginning November 25, 2015, through April 30, 2016, and October 4, 2016, through October 31, 2016. [Dept. Exh. 63-128].
8. The OIG indicates that the time period they are considering the fraud period is November 1, 2015, through May 31, 2016. [Dept. Exh. 3].
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in Food Assistance Program benefits from the State of Michigan. [Dept. Exh. 60].
10. A notice of hearing was mailed to Respondent at her last known address in [REDACTED], Mississippi, 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 Mississippi and receiving FAP benefits from the State of Mississippi from November 25, 2015, through April 30, 2016. The Department has established by clear and convincing evidence that Respondent intentionally withheld information that she had moved to Mississippi for the purpose of maintaining Michigan FAP benefits. Further, the evidence shows that Respondent used her Michigan FAP benefits solely in Mississippi from September 11, 2015, through May 22, 2016, but for a couple of purchases in the State of Louisiana, without informing the Department that she was living in Mississippi. 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 FAP. 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 FAP benefits from the State of Michigan and the State of Mississippi from November 1, 2015, through April 30, 2016. Because Respondent received concurrent FAP benefits from the States of Mississippi and Michigan, Respondent is disqualified from receiving FAP 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 this case, Respondent not only received concurrent benefits from the States of Mississippi and Michigan, but she also used her Michigan FAP benefits solely in Mississippi from September 11, 2015, through May 22, 2016, without informing the Department that she was not living in Michigan.

Respondent's signature on the FAP application dated August 5, 2015, certifies that she was aware that fraudulent participation in FAP could result in criminal, civil or administrative claims. Because of Respondent's failure to report that she was living in Mississippi and using her Michigan FAP benefits solely outside the State of Michigan, she received an overissuance and the Department is entitled to recoup \$ [REDACTED] for the fraud period of November 1, 2015, through May 31, 2016.

DECISION AND ORDER

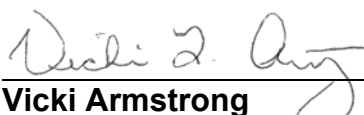
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

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 \$ [REDACTED].

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

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

VLA/bb



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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]