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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: March 1, 2017
MAHS Docket No.: 16-016553
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 February 6, 2017, from Detroit, Michigan. The Department was represented by [REDACTED] [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) and Family Independence Program (FIP) 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 and FIP?

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 October 20, 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.
3. Respondent was a recipient of FAP and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in her residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using FAP benefits outside of the State of Michigan beginning on September 22, 2014.
7. The OIG indicates that the time period they are considering the FAP and FIP fraud period is October 1, 2014 to April 30, 2015.
8. During the fraud period, Respondent was issued ██████████ in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████████ in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and FIP benefits in the amount of ██████████
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Florida.
11. This was Respondent's second alleged FIP IPV.
12. This was Respondent's third alleged FAP IPV.
13. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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 (January 2016), 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 (October 2016), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 Department alleges that Respondent committed an IPV of her FAP and FIP benefits because she failed to update residency information for the purpose of receiving FAP and FIP benefits from more than one state.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (July 2013), p. 1.

Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of this item (BEM 222), benefit duplication is prohibited except for MA and FAP in limited circumstances (see MA Benefits and FAP Benefits in this item). BEM 222, p. 1.

For Case Assistance benefits, a recipient of cash assistance from another state is not eligible for FIP in Michigan for the same month. BEM 222, p. 1.

For FAP cases, a person cannot receive FAP in more than one state for any month. BEM 222, p. 3.

For both FAP and FIP cases, out-of-state benefit receipt or termination may be verified by one of the following: DHS-3782, Out-of-State Inquiry; Letter or document from other state; or Collateral contact with the state. BEM 222, p. 4.

For FIP cases, a person is disqualified for a period of 10 years beginning with the date of conviction if convicted in court of having made a fraudulent statement or representation regarding her residence in order to receive assistance simultaneously from two or more states under any of the following programs:

- State programs funded under Title IV-A of the Social Security Act (known as Temporary Assistance for Needy Families (TANF) in the Social Security Act; known as FIP in Michigan);
- MA, FAP, or SSI.

BEM 203 (July 2014), p. 1.

For FAP cases, a person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826 or DHS-830) of having made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

First, the Department presented Respondent's online application dated January 3, 2014, to show that she acknowledged her responsibility to report changes as required. Exhibit A, pp. 11-31.

Second, the Department presented Respondent's FAP transaction history. Exhibit A, pp. 32-40. The FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan out-of-state in Florida (majority) from September 22, 2014 to April 21, 2015. Exhibit A, pp. 35-40. Except, Respondent did conduct transactions in Texas in September 2014, Michigan in April 2015, and Kentucky in April 2015. Exhibit A, pp. 35 and 39.

Third, the Department presented out-of-state verifications from Florida, claiming that Respondent received FAP and FIP benefits simultaneously. Exhibit A, pp. 41-73. The documentation confirmed that Respondent received FAP benefits simultaneously from the States of Florida and Michigan during the alleged fraud period. Exhibit A, pp. 41 and 75-83. However, the Department failed to provide evidence showing that Respondent received FIP benefits simultaneously from the States of Florida and Michigan during the alleged fraud period. The out-of-state verification only showed that Respondent received TANF benefits (known as FIP in Michigan) from the State of

Florida from February 2016 to May 2016. Exhibit A, pp. 41 and 60-62. As such, this evidence shows there is no overlap in Cash Assistance benefits during the alleged fraud period.

Fourth, the Department presented Respondent's State of Florida public assistance applications dated September 22, 2014 and March 4, 2015, which were submitted just prior to and during the alleged fraud period. Exhibit A, pp. 43-58 and 63-73. In the out-of-state applications, Respondent either marked "no" or "N/A" to the questions that asked if she or anyone in her household received Supplemental Nutrition Assistance Program (SNAP also known as FAP benefits) or TANF (known as FIP in Michigan) benefits from another state or source, even though the Department argued that she did receive FAP and FIP benefits from the State of Michigan at the time. Exhibit A, pp. 49-54 and 64-68.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

First, the evidence indicated that Respondent received FAP benefits simultaneously (Michigan and Florida) from October 2014 to April 2015. See Exhibit A, pp. 41 and 75-83. This represents six months of benefits Respondent received concurrently with the States of Florida and Michigan. Moreover, the evidence presented that Respondent used FAP benefits issued by Michigan in the State of Florida during the fraud period. See Exhibit A, pp. 35-40. Finally, the Department presented Respondent's out of state applications from Florida in which she either marked "no" or "N/A" to the questions that asked if she or anyone in her household received SNAP (also known as FAP) or TANF (known as FIP in Michigan) benefits from another state or source, even though the evidence established that she did receive FAP and FIP benefits from Michigan at the time of the out-of-state applications. Exhibit A, pp. 49-54 and 64-68. This evidence established that Respondent made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously from Michigan and Florida. See BEM 203, p. 1. Therefore, the Department has established that Respondent committed an IPV of FAP benefits.

Second, as stated above, the Department failed to present sufficient evidence showing that Respondent received FIP benefits simultaneously from the States of Florida and Michigan during the fraud period. Thus, the Department is unable to establish a basis for a 24-months disqualification period based on allegation of Respondent receiving FIP benefits simultaneously. Nevertheless, the Department also pursued an IPV of her FIP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued benefits while out- of-state.

To be eligible, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. For FIP cases, a person is a resident if all of the following apply:

- Is not receiving assistance from another state.

- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

BEM 220, p. 1.

For FIP cases, a temporarily absent person is considered to be living in the home when all of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP eligibility determination group (EDG) before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.

* * *

BEM 210 (October 2014), pp. 3-4.

Based on the above information, the undersigned ALJ finds that the Department has established by clear and convincing evidence that Respondent committed an IPV of FIP benefits. The Department presented Respondent's FAP transaction history, which showed that Respondent used FAP benefits out-of-state in Florida (majority) during the fraud period. See Exhibit A, pp. 35-40. Moreover, as shown above, the Department presented her out-of-state applications in which she either marked "no" or "N/A" to the questions that asked if she or anyone in her household received SNAP (also known as FAP) or TANF (known as FIP in Michigan) benefits from another state or source, even though the evidence established that she did receive FAP and FIP benefits from Michigan at the time. Exhibit A, pp. 49-54 and 64-68. This evidence showed that Respondent no longer resided in Michigan and she intentionally withheld information concerning an out-of-state move during the fraud period in order to maintain her Michigan FIP eligibility. Therefore, the Department has established that Respondent committed an IPV of FIP 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. 15; BEM 708 (October 2016), p. 1. Clients are disqualified for ten years for a 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. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP and FIP benefits. Therefore, Respondent is subject to a lifetime disqualification under the FAP program and a 24 month disqualification under the FIP program. BAM 720, p. 16.

FAP 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 group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In the present case, the Department is entitled to recoup ████████ of FAP benefits it issued to Respondent from October 1, 2014 to April 30, 2015. Exhibit A, pp. 75-83.

It should be noted that Respondent's OI amount included Administrative Recoupment (AR) in its calculations. Exhibit A, pp. 75-83. In regards to the OI calculation of FAP benefits, the amount of Electronic Benefit Transfer (EBT) benefits received in the calculation is the gross (before AR deductions) amount issued for the benefit month. See BAM 720, p. 9 and BAM 725 (October 2016), p. 1. Thus, the Department properly included the gross amount of FAP benefits received before AR deductions in the OI calculation. See BAM 720, p. 9 and BAM 725, p. 1.

FIP Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FIP benefits.

Applying the OI begin date policy and in consideration of the out-of-state use that began on September 22, 2014, the Department determined that the OI period began on October 1, 2014. See Exhibit A, pp. 5 and 35. It is found that the Department applied the inappropriate OI begin date and instead, the OI begin date is November 1, 2014. BAM 720, p. 7. Moreover, the FAP transaction history shows that she conducted a majority of her transactions in Michigan in April of 2015, which meant that she possibly resided in Michigan for this month. Exhibit A, p. 39. Therefore, the undersigned ALJ finds that the OI end date is March 31, 2015, which is the period she stopped using a majority of her FAP benefits out-of-state in Florida. See Exhibit A, p. 39 and BAM 720, p. 7. Accordingly, the undersigned ALJ finds that the FIP OI period is November 1, 2014 to March 31, 2015.

Additionally, 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 group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FIP benefits by the State of Michigan from November 2014 to March 2015, which totaled [REDACTED]. Exhibit A, pp. 78-83. It should be noted that the Department included State Disability Assistance (SDA) payments issued to Respondent as part of the OI amount; however, nowhere in the evidence packet does it show that the Department is seeking recoupment of SDA benefits. Exhibit A, p. 77. Therefore, the Department is only entitled to recoup [REDACTED] of FIP benefits it issued to Respondent from November 1, 2014 to March 31, 2015.

In summary, the total OI amount that the Department is entitled to recoup is \$ [REDACTED] from the FAP/FIP programs ([REDACTED] of FAP plus [REDACTED] for FIP).

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 an OI of FAP and FIP program benefits in the amount of [REDACTED]

The Department is **ORDERED** to reduce the OI to \$ [REDACTED] for the FAP period October 1, 2014 to April 30, 2015, and the FIP period of November 1, 2014 to March 31, 2015, and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

It is **FURTHER ORDERED** that Respondent be personally disqualified from **FAP** for **lifetime**.

It is **FURTHER ORDERED** that Respondent be personally disqualified from **FIP** for **24 months**.

EF/tm



Eric J. Feldman

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]

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CC: [REDACTED]
[REDACTED]