



RICK SNYDER
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 3, 2017

MAHS Docket No.: [REDACTED]

Agency No.: [REDACTED]

Petitioner: [REDACTED]

Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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). The Respondent was represented by Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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 FAP benefits for 12 months?

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 changes in residency to the Department within 10 days.
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 US 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 October 1, 2014, 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 (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 (January 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 benefits because she failed to notify the Department that she no longer resided in Michigan, but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (February 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purpose other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (February 2014), p. 3.

Additionally, the Department provided Petitioner's usage history which demonstrated that Respondent used her Michigan-issued FAP benefits exclusively in Florida beginning [REDACTED] and continuing until [REDACTED] with the exception of two Michigan purchases occurring on [REDACTED] and [REDACTED]. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

The Department also presented documentation showing that Respondent began working in Florida on [REDACTED]. The Department also presented an application submitted by Respondent on [REDACTED], in which she acknowledged her responsibility to report changes within 10 days.

Respondent provided inconsistent testimony, which is found to lack veracity. Respondent initially indicated that she relocated to Florida in [REDACTED]. Respondent then indicated that she permanently moved to Florida in [REDACTED]. Respondent indicated that she traveled back and forth from Florida to Michigan and remained in Michigan for a week or two at a time. The transaction history presented by the Department revealed that from [REDACTED] (when Respondent began working) through [REDACTED], Respondent never left Florida for more than three days, if at all.

Respondent testified that she was aware of her responsibility to report changes to the Department within 10 days. Respondent acknowledged that she failed to report her relocation to the Department. Respondent indicated that she did not report the move because from [REDACTED], she did not have a permanent address in Florida. Respondent's reason for failing to report her move does not explain

why she did not notify the Department of the relocation once she moved into her apartment in [REDACTED]. Respondent further acknowledged that she failed to report her employment to the Department. Respondent provided no explanation for failing to report her earnings to the Department. Given that Respondent provided inconsistent testimony, was aware of her responsibility to report changes and her failure to do so; it is found that the Department has established that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (October 2015), p. 15. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 16. 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. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12 month disqualification under the FAP program.

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. At the hearing, the Department established that the State of Michigan issued a total of [REDACTED] in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for [REDACTED] in FAP benefits during this period.

In support of its contention that Respondent was overissued FAP benefits, the Department presented Respondent's FAP transaction history showing that she used her FAP benefits issued by the State of Michigan exclusively in Florida from [REDACTED] through [REDACTED]. As discussed above, Respondent was no longer eligible for FAP benefits after she resided outside Michigan for more than 30 days. Respondent began employment in Florida on [REDACTED] and there is no evidence that Respondent returned to Michigan, other than possibly for a brief visit, after she began employment. By [REDACTED], it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p 2. Therefore, the Department has established it is entitled to recoup the [REDACTED] in FAP benefits it issued to Respondent during the fraud period.

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 program FAP 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 is subject to a 12 month disqualification from FAP benefits.

JM/hw



Jacquelyn A. McClinton
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]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]