



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: March 21, 2017
MAHS Docket No.: 17-000239
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 [REDACTED], Michigan. Respondent personally appeared and testified.

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 28 exhibits which were admitted. The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) 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 (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. On [REDACTED], Respondent submitted a FAP application. [Dept. Exh. 10-21].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 28].
4. Respondent was aware of the responsibility to report to the Department that he was incarcerated and to not allow someone else to use his card. [Dept. Exh. 20-21].
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 14].
6. Respondent was arrested and incarcerated in the [REDACTED] on [REDACTED]. [Dept. Exh. 22-23].
7. As of the date of the hearing in the above captioned matter, Petitioner is still incarcerated. [Testimony].
8. The FAP Purchase History shows purchases made with Petitioner's EBT card from [REDACTED], through [REDACTED]. [Dept. Exh. 25-27].
9. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], through [REDACTED]. [Dept. Exh. 4, 17].
10. During the fraud period, Respondent EBT card was used to purchase \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to no benefits during this time period. [Dept. Exh. 3-4].
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]. [Dept. Exh. 3].
12. This was Respondent's first alleged IPV. [Dept. Exh. 1, 3].
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), 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 January 1, 2016, 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, pp 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 700, p 7 (1/1/2016); BAM 720, p 1 (1/1/2016).

A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the Food Stamp Act of 1977, 7 USC 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. BEM 203 (Emphasis added). This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. DHS-Publication 322. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card. *Id.*

Respondent testified that he had all his property stolen, including his social security card and EBT card, a few days before his arrest in [REDACTED]. Respondent stated he did not report the theft. Respondent said that his mother tried to call the Department in [REDACTED], to stop his FAP benefit issuance. Respondent's testimony was less than credible.

In this case, the record evidence clearly shows that Respondent was incarcerated during the time frame of [REDACTED], through [REDACTED], when his EBT card was used. There was no one else in his FAP group. In order for an EBT card to be used, the PIN must be known. Therefore, Respondent had to share his PIN with someone outside his FAP group in order for the EBT card to work. As a result, the Department has established an IPV by clear and convincing evidence that Respondent voluntarily transferred his EBT card and/or PIN to a person outside his FAP group, as shown by the FAP purchases made while Respondent was incarcerated.

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 2. 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 (4/1/2016). 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 16.

In this case, this was Respondent's first instance of an IPV; therefore, a 12 month disqualification is required.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

In this case, Respondent received \$ [REDACTED] in FAP benefits that he was not entitled to; therefore, the Department is permitted to recoup that amount.

DECISION AND ORDER

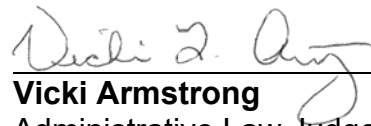
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did an OI of 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 be disqualified from FAP for a period of 12 months.

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]