



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: April 13, 2017
MAHS Docket No.: 16-014735
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 February 8, 2017 and March 29, 2017, from Detroit, 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).

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 benefits for FAP?

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 August 30, 2016, 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 his incarceration status.
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 May 1, 2016 to August 31, 2016 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████
9. This was Respondent's first alleged IPV.
10. On January 9, 2017, the Michigan Administrative Hearing System (MAHS) sent Respondent a Notice of Disqualification Hearing informing him a hearing scheduled on February 8, 2017.
11. The Notice of Disqualification Hearing issued on January 9, 2017 was returned by the US Post Office as undeliverable.
12. On February 8, 2017, the OIG agent was present for the hearing, but it was determined that the hearing had to be continued due to a discovery that Respondent had an updated address.
13. On February 14, 2017, the undersigned Administrative Law Judge (ALJ) issued an Order of Continuance.
14. On February 23, 2017, MAHS sent Respondent a Notice of Disqualification Hearing informing him a hearing scheduled on March 29, 2017.

15. The Notice of Disqualification Hearing issued on February 23, 2017 was not returned by the US Post Office as undeliverable and was sent to Respondent's last known address.

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 (January 2016), pp. 12-13; ASM 165 (August 2016), pp. 1-2.

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.

A person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804 (July 2014), p. 1.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to report his incarceration/Bridge card was used during his period of incarceration and that he intentionally withheld the information for the purpose of maintaining Michigan FAP eligibility.

First, the Department presented Respondent's online application dated March 24, 2016, to show that he acknowledged his responsibility to report changes as required. Exhibit A, pp. 14-44.

Second, the Department presented credible evidence and testimony showing that Respondent was incarcerated from April 21, 2016 to August 2016. Exhibit A, pp. 3 and 10.

Third, the Department presented Respondent's FAP transaction history that showed Respondent's Electronic Benefits Transfer (EBT) card was being used while he was incarcerated. Exhibit A, pp. 11-12.

Fourth, on or about August of 2016, the OIG's Investigation Report (OIG report) indicated that the OIG agent made contact with Respondent at the county jail in which the following was reported: (i) he acknowledged that he had been incarcerated since April 21, 2016; (ii) he indicated that his ex-wife had his wallet along with his Bridge/EBT card and has been using the FAP benefits to help support his children; and (iii) he felt it was not a problem for his ex-wife to use the card as she is his Power of Attorney, even though the FAP benefits were only meant for Respondent (group size of one). Exhibit A, p. 3.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. Yes, the OIG report indicated that Respondent acknowledged his incarceration and that he admitted his ex-wife was using the Bridge/EBT card, who is an unauthorized user. See Exhibit A, p. 3. However, in order to impose a disqualification, the Department must show by clear and convincing evidence that Respondent intentionally committed an IPV violation. BAM 720, p. 1; 7 CFR 273.16(c)(1) and (2); and 7 CFR 273.16(e)(6). The undersigned finds that Respondent's statements to the OIG agent in August 2016 did not indicate an intent to commit a violation of the FAP program. Furthermore, there was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld his incarceration information from the Department. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented his incarceration for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

It should be noted that the Department did not seek a trafficking claim against Respondent in this case.

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 (April 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated above, there was no IPV committed in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

A client error is present because the Respondent failed to notify the Department of his incarceration. See BAM 715, p. 1. The evidence established that Respondent was incarcerated during the OI period and therefore, he was not eligible for FAP benefits.

Applying the overissuance period standards, the Department improperly determined that the OI period began on May 1, 2016. Exhibit A, p. 3. Respondent was incarcerated beginning April 21, 2016. Exhibit A, p. 10. Policy states that a person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804, p. 1. Applying the 30 day waiting period would affect the OI period beginning June 1, 2016. See BAM 715, pp. 4-5 and BAM 804, p. 1. As such, the appropriate OI period begin date is June 1, 2016.

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 715, p. 6.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from June 2016 to August 2016, which totaled [REDACTED] Exhibit A, p. 13. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from June 1, 2016 to August 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, if any, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of [REDACTED]

The Department is **ORDERED** to reduce the OI to [REDACTED] for the period June 1, 2016 to August 31, 2016, and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
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CC:

[REDACTED]
[REDACTED]