



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 5, 2017
MAHS Docket No.: 16-017113
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on April 6, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear at the hearing and it was held in the 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 the Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
3. Should the Respondent be disqualified from the Food Assistance Program (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. On April 3, 2010, the Department received Respondent's application for benefits. Exhibit A, p 13.

2. On January 1, 2011, the Department approved Respondent for Food Assistance Program (FAP) benefits. Exhibit A, p 18.
3. The Department received Respondent's completed Redetermination (DHS-1010) form dated December 10, 2011, where she acknowledged her duty to notify the Department of changes to her circumstances. Exhibit A, pp 14-17.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. On November 12, 2010, Respondent began using her Food Assistance Program (FAP) benefits in Texas, and used them exclusively in Texas through March 25, 2011. Exhibit A, p 26.
6. On April 23, 2011, Respondent returned to Michigan and used her Food Assistance Program (FAP) benefits exclusively in Michigan through May 12, 2011. Exhibit A, pp 27-28.
7. On May 18, 2011, Respondent began using her Food Assistance Program (FAP) benefits in Texas and continued to use them exclusively in Texas through December 23, 2011. Exhibit A, pp 28-31.
8. From December 24, 2011, through December 31, 2011, Respondent used her Food Assistance Program (FAP) benefits in Michigan. Exhibit A, p 31.
9. On January 3, 2012, Respondent began using her Food Assistance Program (FAP) benefits in Texas, and used them exclusively in Texas through June 3, 2012. Exhibit A, pp 31-33.
10. From June 19, 2012, through June 22, 2012, Respondent used her Food Assistance Program (FAP) benefits in Michigan. Exhibit A, p 33.
11. On June 22, 2012, Respondent began using her Food Assistance Program (FAP) benefits in Texas, and used them predominately in Texas through June 29, 2013, with one purchase in Michigan on August 8, 2012, that was keyed in. Exhibit A, pp 33-37.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from January 1, 2011, through June 30, 2013. Exhibit A, pp 18-22.
13. Respondent received Medical Assistance (MA) benefits with a value of \$ [REDACTED] from January 1, 2011, through June 30, 2013. Exhibit A, pp 23-24.
14. On November 2, 2016, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-10.

15. The Department's OIG filed a hearing request on November 2, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.

16. This was Respondent's first established IPV.

17. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (January 1, 2016), pp 12-
13.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), p 1.

To be eligible for FAP and MA benefits, a person must be a Michigan resident. A person is considered a resident under the FAP while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2016), p 1.

On an application for assistance dated April 3, 2010, the Respondent acknowledged the duty to report any change of residency to the Department. Respondent received FAP benefits totaling \$ [REDACTED] from January 1, 2011, through June 30, 2013. The Department presented substantial evidence that Respondent was not living in Michigan for portions of this period where she was not eligible for the FAP benefits she received.

On November 12, 2010, Respondent began using her FAP benefits in Texas, and used them exclusively in Texas through March 25, 2011. If Respondent had reported to the Department that she had moved to Texas on November 12, 2010, the Department would have closed her FAP benefits by the benefit period after December 4, 2010, and she was not eligible for any of the FAP benefits she received from January 1, 2011, through March 31, 2011.

On April 23, 2011, Respondent returned to Michigan and used her FAP benefits exclusively in Michigan through May 12, 2011. The evidence is insufficient to establish when Respondent moved back to Michigan other than her first use of FAP benefits in Michigan on April 23, 2011, but it is presumed that she was eligible for the FAP benefits she received from April 1, 2011, through June 30, 2011.

On May 18, 2011, Respondent began using her FAP benefits in Texas, and continued to use them exclusively in Texas through December 23, 2011. If Respondent had reported to the Department that she had moved to Texas on May 18, 2011, then the Department would have closed her FAP benefits by the benefit period after June 19, 2011, and she was not eligible for any of the FAP benefits he received from July 1, 2011, through December 31, 2011.

Respondent returned to Michigan on December 24, 2011, and used her FAP benefits in Michigan. Respondent was eligible for FAP benefits in January of 2012.

On January 3, 2012, Respondent began using her FAP benefits in Texas and used them in Texas through June 29, 2013. Respondent used her FAP benefits exclusively in Texas during this period except for four purchases in June of 2012, and one purchase on August 8, 2012, that were made in Michigan. Department records indicate that these five purchases were keyed in, which means that although the benefits were used in Michigan, there is no evidence that Respondent was actually in Michigan with her benefits card. If Respondent had reported moving to Texas after December 31, 2011, the Department would have closed her FAP benefits as of February 1, 2012. The evidence is insufficient to establish that Respondent was living in Michigan or had any intent to remain a Michigan resident from February 1, 2012, through June 1, 2013, and she was not eligible for any of the FAP benefits she received during that period.

The evidence does not support a finding that the LIHEAP supplemental benefit in March of 2012 is a benefits that Respondent was not eligible to receive or that the Department is authorized to recoup the \$ [REDACTED] LIHEAP benefit.

This Administrative Law Judge finds that Respondent received FAP benefits totaling \$ [REDACTED] from January 1, 2011, through June 1, 2013, but would was eligible for \$ [REDACTED] of those benefits. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits.

The Department credibly determined that Respondent moved to Texas while receiving MA benefits and there is no evidence to establish that Respondent's visits to Texas were temporary or that she had any intent to remain a Michigan resident. Respondent was not eligible to received MA benefits while she was a Texas resident. Respondent was potentially eligible for MA benefits if she intended to establish residency in Michigan after March 25, 2011, until May 18, 2011.

This Administrative Law Judge finds that the record evidence is insufficient to establish that Respondent was not eligible for MA benefits on May 28, 2011, June 19, 2011, or June 20, 2011, and therefore, Respondent received a \$ [REDACTED] overissuance of MA benefits.

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, 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).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged her duty to report any changes to her circumstances that affected her eligibility to receive FAP and MA benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. The Department credibly determined that Respondent failed to report when she was not living in Michigan or that she had any intent to remain a Michigan resident during those periods. Respondent was not eligible for FAP or MA benefits while a resident of Texas. This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report when she was not living in Michigan for the purpose of receiving FAP and MA benefits she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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.

The record evidence indicates that this is Respondent's first established IPV violation.

The Department has established an Intentional Program Violation (IPV).

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 the Respondent committed an IPV.
2. The Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED]
3. The Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$ [REDACTED]
4. The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period January 1, 2011, through June 30, 2013, and initiate recoupment procedures in accordance with Department policy.
5. It is FURTHER ORDERED that the Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/nr



Kevin Scully
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]