



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: June 15, 2017
MAHS Docket No.: 16-019202
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 792.10111 and R 792.11003. After due notice, a telephone hearing was held on June 8, 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) and Mich Admin Code, R 792.10134.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 December 20, 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 FAP program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. The Department notified Respondent of the responsibility to report changes in residency and of the prohibition against receipt of food assistance benefits from more than one state.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is from September 1, 2014 to October 31, 2014.
7. The Department alleges that during the fraud period Respondent was issued ██████ in FAP benefits by the State of Michigan but he was entitled to ██████ in such benefits during this time period.
8. The Department alleges that during the fraud period Respondent received an OI in FAP benefits in the amount of ██████
9. This was Respondent's first alleged IPV, and the Department has requested a 10 year disqualification due to concurrent receipt of benefits.
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), p. 5.

In this case, the Department alleges FAP IPV with a FAP OI less than \$500. However, because the OI is tied to concurrent receipt of benefits, the Department's IPV action is permitted under Department policy.

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 his reporting responsibilities, and

- The client has no apparent physical or mental impairment that limits his or his 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 order to establish an IPV, the Department must establish that the client not only committed, but also *intended* to commit, an IPV. 7 CFR 273.16(e)(6); 7 CFR 273.16(c).

In this case, the Department alleges that Respondent committed an IPV because he received FAP benefits from the State of Michigan at the same time he received food assistance benefits from the State of Arizona. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3.

In support of its IPV allegations, the Department presented (i) an application for FAP benefits Respondent submitted to the Department on August 6, 2014; (ii) email correspondence between the OIG agent and an employee of the Arizona FAA (Family Assistance Administration) concerning duplicate assistance to Respondent, identified by name and birthdate; (iii) a transaction history showing that Respondent used his Michigan-issued FAP benefits in Michigan during the fraud period; and (iv) a benefit summary inquiry showing that the Department issued FAP benefits to Respondent during the fraud period.

The evidence presented shows that Respondent received food assistance benefits from the State of Arizona from January 2013 to October 2014. When he applied for FAP benefits in Michigan on August 6, 2014, he failed to respond to questions concerning whether he had moved from, or received assistance from, another state any time after August 1996 (Exhibit A, p. 12). As a result, the Department was unaware that it should have made an out-of-state inquiry to verify that Respondent was not receiving benefits in another state. See BEM 222, p. 3. Because Respondent withheld information concerning his move from another state, he received benefits from the State of Michigan that he was not eligible to receive. Because the Department has established by clear and convincing evidence that Respondent willingly withheld information for the purposes of establishing FAP eligibility, the Department has established that Respondent committed an IPV concerning his FAP 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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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.

A ten-year disqualification for concurrent receipt of benefits applies if fraudulent statements were made regarding identity or residency. BAM 720, p. 16. In this case, after Respondent's August 6, 2014 Michigan application was approved, Respondent used the FAP benefits issued to him in Michigan. Therefore, Respondent was a Michigan resident at the time of his application and he accurately reported his residency at the time of application. The evidence presented by the Department fails to establish that Respondent made a fraudulent statement regarding identity or residency for the purpose of obtaining concurrent benefits. Therefore, Respondent is not subject to a 10 year disqualification. However, he is subject to the standard one-year disqualification from receipt of FAP benefits based on concurrent receipt of benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a [REDACTED] FAP OI for September 1, 2014 to October 31, 2014 based on Respondent's concurrent receipt of benefits. As discussed above, Respondent was not eligible for food assistance from two different states during the same period. Because the evidence shows that Respondent received FAP benefits from the State of Michigan and food assistance benefits from the State of Arizona during the fraud, he was ineligible for the FAP benefits issued to him during the fraud period. These benefits total [REDACTED].

Thus, the Department is entitled to recoup and/or collect \$[REDACTED] from Respondent for overissued FAP benefits from September 1, 2014 to October 31, 2014.

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 benefits in the amount of [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for the amount of \$ [REDACTED] less any amounts already recouped and/or collected, for the FAP OI period of September 1, 2014 to October 31, 2014.

It is FURTHER ORDERED that Respondent be personally disqualified from FAP for a period of **12 months**.



AE/tm

Alice C. Elkin
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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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC: [REDACTED]
[REDACTED]