



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 9, 2017

MAHS Docket No.: [REDACTED]

Agency No.: [REDACTED]

Petitioner: [REDACTED]

Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 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).

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 (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 Food Assistance (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 [REDACTED] to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of Food Assistance benefits issued by the Department.
4. On the Assistance Application signed by Respondent on [REDACTED] [REDACTED] [REDACTED], Respondent reported that he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in his residence to the Department.
6. Respondent may have had an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning on [REDACTED], and continued to use the benefits in Illinois until [REDACTED] [REDACTED]. He then resumed use of his benefits in Michigan. Exhibit A, p. 35
8. The OIG indicates that the time period they are considering the fraud period is [REDACTED] [REDACTED]
9. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Illinois. The Petitioner began receiving Illinois FAP benefits beginning [REDACTED] [REDACTED]. Exhibit A, p. 38 and 39
11. This was Respondent's **first** alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Services 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), and Department of Health and Human Services 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:

- 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, 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. 1.

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 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 because he received FAP benefits from the State of Michigan at the same time he received food assistance benefits from the State of Illinois. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. The Respondent first applied for FAP benefits on [REDACTED], at which time prior thereto he resided in the [REDACTED] County Jail and was expected to leave on [REDACTED]. The Respondent was approved and began using his FAP benefits on [REDACTED]. Exhibit A, p. 32.

In support of its IPV allegations, the Department presented (i) an application Respondent submitted on [REDACTED] in which he indicated he was homeless. Exhibit A, pp. 11-32; (ii) an email from the DHS Web [REDACTED] in response to the Department's [REDACTED] email inquiry concerning Respondent, showing that Respondent was issued food assistance benefits by the State of Illinois from [REDACTED] Exhibit A, pp. 38; (iii) a transaction history showing that Respondent used his Michigan-issued food benefits in Illinois between [REDACTED] Exhibit A, pp. 35-37; and (iv) a benefit summary inquiry showing that the Department issued FAP benefits to Respondent between [REDACTED] Exhibit A, pp. 41.

The evidence presented establishes that between [REDACTED] Respondent received Michigan-issued FAP benefits and, during the same period, received food assistance benefits issued by the State of Illinois. The evidence also established that Respondent used his Michigan-issued FAP benefits in Illinois beginning [REDACTED]. The evidence was sufficient to show, by clear and convincing evidence, that Respondent received food benefits from both the State of Michigan and from the State of Illinois between [REDACTED]. The evidence established that the Respondent applied for benefits and approximately 6 weeks later used his benefits, thereafter, in Illinois and at no time reported his change of address and that he no longer resided in Michigan. The Department has established dual receipt of FAP benefits.

However, in order for the Department to demonstrate an IPV for concurrent receipt of FAP benefits the Department must present evidence of Respondent having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 202, (October 2015), p.1; BAM 720, p. 16. The evidence presented did not demonstrate fraudulent representation regarding identity or residence as at the time of the application, the evidence demonstrates that Respondent was in Michigan.

Thus, the Department has not established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits. However, the Department has established the Respondent failed to report that he was no longer residing in Michigan causing the Department to continue to issue Michigan based FAP benefits. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (7/1/14), p. 1. A person is considered a resident while living in Michigan for any 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 thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (7/1/14), pp. 2-3. Based upon a review of the evidence the Department has established an IPV due to Respondent's failure to report his change of address and residence.

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 where the client made fraudulent statement regarding identity or residency, 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.

In this case the Department has not established an IVP by clear and convincing evidence with respect to concurrent receipt of benefits however has established an IPV with respect to failing to timely report change of address and residence. Thus, the Department is entitled to a finding of disqualification for a 12 month period.

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] overissuance during the fraud period **based on Respondent's concurrent receipt of benefits. Respondent was not eligible for** FAP benefits issued by the State of Michigan during any period he was issued food assistance benefits by the State of Illinois. BEM 222, p. 3. The evidence showed that Respondent received food assistance benefits from the State of Illinois during the entire period he received FAP benefits from the State of Michigan. Therefore, Respondent was not eligible for any of the FAP benefits he received from the State of Michigan.

The benefit summary issuance presented by the Department showed that during the fraud period, Respondent received [REDACTED] in FAP benefits (Exhibit A, p. 41). Because

Respondent was not eligible for concurrent receipt of benefits, he was not eligible for any of the FAP benefits issued during the fraud period.

Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits between [REDACTED]

DECISION AND ORDER

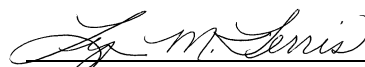
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of [REDACTED]

The Department is ORDERED to initiate recoupment/**collection** procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance for a period of **12 months**.

LF/hw



Lynn M. Ferris
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]

Petitioner

[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]