



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: September 11, 2017
MAHS Docket No.: 17-003383
Agency No.: [REDACTED]
Petitioner: OIG
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 August 21, 2017, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

The 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 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 FAP benefits issued by the Department.
4. On the Assistance Application signed by Respondent on [REDACTED], the Respondent did not answer the questions regarding whether she intended to reside in Michigan or whether she was a resident of Michigan. Exhibit A, p. 14.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no 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]. The Respondent used her FAP benefits out of state through [REDACTED]. Exhibit A, pp. 51-59.
8. The OIG indicates that the time period they are considering the fraud period is [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 [REDACTED] Exhibit A, pp. 63-65.
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 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), 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. 12-13.

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 (October 2016), p. 78 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 is disqualified for a period of 10 years if found guilty through the administrative hearing process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement,) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

A person may not receive FAP in more than one state for any month. BEM 222 (October 2016), p. 3.

In this case, the Department seeks an IPV regarding Respondent's FAP due to concurrent receipt of FAP benefits from both Michigan and ██████ during the period ██████. The Department presented evidence that Respondent received FAP benefits from ██████ during the period ██████. Exhibit A, pp. 64-65. The Department also presented evidence that the Respondent received Michigan FAP benefits for the months of ██████, in the amount of \$█████ per month. Exhibit A, p. 66. In addition, the evidence presented demonstrated that Respondent used her Michigan FAP benefits exclusively in ██████ for the months of ██████. Exhibit A, pp. 50-60.

The Respondent first applied for FAP benefits in Michigan ██████. At that time, the Respondent listed a Michigan address which was not proven as incorrect. Exhibit A, p. 12. The evidence did not demonstrate through a redetermination or other written verification that the Respondent misrepresented facts or made a statement to the Department about her whereabouts, change of address or residency. Because the Department did not demonstrate that Respondent made a false statement or representation to the Department regarding her identity or residence in order to receive dual benefits, it is not entitled to a finding of an IPV disqualification of 10 years. The information provided by the State of ██████ also disclosed that Respondent provided a ██████, Michigan, address listed in the information ██████ provided at the Department's request. Exhibit A, p. 63. However the Department did demonstrate an IPV as the Respondent did knowingly receive dual benefits from ██████ and Michigan and withheld information of her out-of-state status; and thus, an IPV is established. BEM 222.

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 30 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 her change of address and residence.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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.

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 or FAP. BAM 720, p. 13. 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.

In this case, the Department has established an IPV by clear and convincing evidence with respect to failing to timely report a change of address and residency; and 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 an overissuance of \$ [REDACTED] during the fraud period [REDACTED]. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of [REDACTED] BEM 222, p. 3. The evidence showed that Respondent received food assistance benefits from the State of [REDACTED] during the period she was also receiving FAP benefits from the State of Michigan. Therefore, Respondent was not eligible for any of the FAP benefits she 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. 67). Because Respondent was not eligible for concurrent receipt of benefits, she was not eligible for any of the Michigan issued 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 personally disqualified from participation in the FAP program for **12 months**.

LMF/jaf



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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]