RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: September 11, 2017
MAHS Docket No.: 17-007167
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, 42 CFR 431.230(b), 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 August 21, 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 [redacted], 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 residence.

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 [redacted], (fraud period).

7. During the fraud period, Respondent was issued $[redacted] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to $[redacted] in such benefits during this time period.

8. The Department alleges that Respondent received an OI in FAP benefits in the amount of $[redacted]

9. This was Respondent's **first** alleged IPV.

10. 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), 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 $500.00 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; ASM 165 (August 2016), p. 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 (October 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 this case, the Department seeks an IPV due to the Respondent's use of her FAP benefits outside of the State of Michigan for an extended period of time without reporting a change of address and for more than 30 days.

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.

The Respondent's FAP Electronic Benefits Transfer (EBT) card was used in the State of [redacted] exclusively from [redacted], until her FAP case closed in [redacted]. Exhibit A, p. 51. The Respondent began employment in [redacted] at [redacted] on [redacted]. Exhibit A, p. 57. At no time did the Respondent report that she had moved to [redacted] and that she had established an address. The Respondent had applied for FAP, Cash Assistance and Medical Assistance and SER benefits in Michigan on [redacted], and certified that she received an Information Booklet explaining her responsibilities. Exhibit A, p. 33. The application advised the Respondent that she was required to report changes within 10 days, including change of address and changes in child's school attendance. Exhibit A, p. 34. In addition, the OIG agent representing the Department testified under oath that he had verified information from the [redacted] Public Schools that they had transferred both her sons' school records out of state as of [redacted]. Exhibit A, p. 55. The Respondent did not report that her children were attending different schools out of state. Exhibit A, p. 53.

Based upon the evidence presented, it is determined that it was sufficient to establish by clear and convincing evidence that Respondent intentionally witheld or misrepresented information concerning her residency and intentionally did not advise the Department of her change of address for the purpose of establishing and continuing her Michigan FAP eligibility having begun out-of-state use on [redacted]. Thus, the Department has established an IPV was commited by the Respondent. The client intentionally failed to report information regarding her new address and that she no longer resided in Michigan and was clearly instructed regarding her reporting responsibilities when she applied for benefits.

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 (October 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

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 the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from [redacted]. In the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan and was was not eligible for FAP benefits issued by the Department. The Department provided as evidence a new address for Respndent in [redacted] based upon Respondent's employment information and transfer of her children's Michigan school enrollment records out of state.

In this case, the Department alleges that Respondent was overissued FAP benefits for the period [redacted]. The Department presented a benefit summary inquiry to support issuances received by Respondent during this period totaling $[redacted] Exhibit A, p. 59.

The Department, based upon the evidence presented of out-of-state use and receipt of Respondent of FAP benefits during the period, has established an overissuance of $[redacted] that the Department is entitled to recoup.

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 following program(s) Food Assistance.

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 FAP for a period of 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]