



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 4, 2017
MAHS Docket No.: 17-008116
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 September 28, 2017, from [REDACTED], 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 12 months?

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 completely and truthfully answer all questions on the FAP forms.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent used FAP benefits in [REDACTED] Indiana from [REDACTED], through [REDACTED].
7. On [REDACTED], Petitioner applied for FAP in the State of Indiana, thereby reporting that he was a resident of Indiana.
8. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], through [REDACTED] (fraud period).
9. 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.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
11. This was Respondent's **first** alleged IPV.

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.

Pertinent Department policy dictates:

To be eligible for FAP in the State of Michigan, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. BEM 220, page 1

For FAP:

A person is considered a resident **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 homeless person is an individual who lacks a fixed and regular nighttime dwelling or whose temporary night time dwelling is one of the following:

- Supervised private or public shelter for the homeless.

Exception: For FAP, a client is considered homeless only for the first 90 days.

- Halfway house or similar facility to accommodate persons released from institutions.
- Home of another person.

Exception: For FAP, a client is considered homeless only for the first 90 days.

- Place not designed or ordinarily used as a dwelling (for example, a building entrance or hallway, bus station, park, campsite, vehicle).

Exception: **For FAP, a client is considered homeless only for the first 90 days. Lack of a permanent dwelling or fixed mailing address does not affect an individual's state residence status.** Assistance cannot be denied solely because the individual has no permanent dwelling or fixed address. BEM 220, page 2

Eligible persons may include:

- Persons who entered the state with a job commitment or to seek employment; and
- Students (for FAP only, this includes students living at home during a school break.) BEM 220, pages 1-2

Effective January 1, 2016, 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 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, pp 12-13 (1/1/2016).

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 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, Petitioner applied for Michigan FAP per DHS-1171 dated [REDACTED], and acknowledged program rules. The card was used exclusively in [REDACTED], Indiana from [REDACTED] through [REDACTED], a total of eight months. The State of Indiana reported that Petitioner applied for FAP in Indiana on [REDACTED], reporting that he was a resident of Indiana. This Administrative Law Judge finds that Respondent moved out of the State of Michigan and continued to use the benefits after he had established residence in Indiana.

The Department established by clear and convincing evidence that Respondent intentionally established residency in Indiana as evidenced by his exclusive purchases in [REDACTED]. He did not notify the State of Michigan that he had moved and continued to use his State of Michigan FAP benefits in the State of Indiana, when he was not a resident of Michigan. He did sign an application stating that he understood his reporting responsibilities. Respondent withheld and misrepresented information that he was a resident of the State of Michigan while he was resident of the State of Indiana for the purpose of maintaining FAP benefits. Therefore, the Department has established an Intentional Program Violation.

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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 17.

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 18.

Respondent's signature on the Assistance Application from [REDACTED], certifies that he was aware that fraudulent participation in FAP could result in criminal, civil, or administrative claims. This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed a first IPV of the Food Assistance Program, resulting in a one year disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

In the above captioned matter, the record evidence shows Respondent intentionally established his residency in the State of Indiana effective November 21, 2015 and continued to use Michigan Food Assistance Program benefits until July 21, 2016.

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:

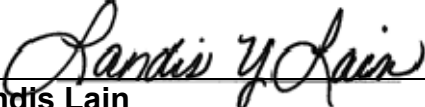
1. The Department has established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did receive an overissuance of Food Assistance Program 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 participation in the Food Assistance Program for a period of **12 months** beginning on September 29, 2017.

LL/hb



Landis Lain
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]