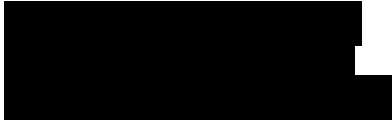




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: December 15, 2017
MAHS Docket No.: 17-012951
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Laura Gibson

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 December 6, 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 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 August 22, 2017, 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 any changes in circumstances to the Department, and to not trade or sell FAP benefits.
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 March 1, 2017 to May 31, 2017 (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 \$0 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 Services 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), pp. 5; 12-13; ASM 165 (August 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 700 (October 2016), pp. 7-8; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV because (i) he failed to notify the Department when he became incarcerated, and/or (ii) he trafficked his FAP benefits while incarcerated.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within ten days. BAM 105 (October 2016), p. 11. Residents of institutions are not eligible for FAP unless the facility is authorized by the Food and Consumer Service to accept FAP benefits, is an eligible group living facility, or is a medical hospital and there is a plan for the individual's return home. BEM 212 (January 2017), p. 8. A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services. BEM 212, p. 8. Those in jails, prisons, juvenile detention, or a secured short-term detention are considered to be residents of institutions. BEM 265 (July 2015), pp. 1-2.

In support of its contention that Respondent committed an IPV by failing to report his incarceration, the Department presented: (i) an application Respondent submitted to the Department on November 3, 2016; (ii) a booking card showing that Respondent was in [REDACTED] from February 21, 2017 to July 19, 2017; and (iii) a benefit summary inquiry showing that Respondent was issued FAP benefits from March 1, 2017 to May 31, 2017.

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 alleged that, because the application advised Respondent of his responsibility to report changes within ten days, Respondent committed an IPV when he failed to report to the Department that he was incarcerated. However, Respondent's application does not establish that Respondent intentionally withheld information regarding his circumstances for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. While Respondent may have been aware of his reporting responsibilities, no evidence was presented that he intentionally disregarded those responsibilities. Therefore, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV by failing to report his change in circumstances.

The Department further alleged that Respondent committed an IPV of his FAP benefits by trafficking those benefits, because Respondent's FAP benefits were used while Respondent was incarcerated. In support of its contention that Respondent trafficked his FAP benefits, the Department presented: (i) a booking card showing that Respondent was in [REDACTED] from February 21, 2017 to July 19, 2017; and (ii) an EBT history showing that Respondent's benefits were used while he was incarcerated.

The definition of trafficking includes the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 2. Consideration is generally defined as something of value that is bargained for by a party as part of a contract. In this case, no evidence was presented that Respondent had received any cash or consideration in exchange for the use of his FAP benefits while he was incarcerated. Therefore, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV by trafficking his FAP 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. 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. 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

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 that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period. As discussed above, individuals who are incarcerated are not entitled to receive FAP benefits. BEM 212, p. 8; BEM 265, pp. 1-2. The booking card establishes that Respondent was incarcerated beginning February 21, 2017 (Exhibit A, p. 40-41). Taking into account the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, the FAP OI period would properly begin April 1, 2017. BAM 720, p. 7. Thus, the Department has not established an overissuance for the month of March 2017.

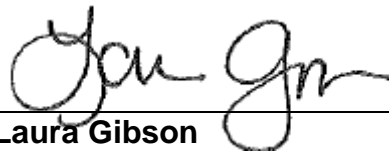
The benefit summary inquiry presented by the Department showed that during the period of April 1, 2017 to May 31, 2017, Respondent received \$ [REDACTED] in FAP benefits (Exhibit A, p. 39). Because Respondent was incarcerated during this period, he was not eligible for any of the FAP benefits issued during this period. Thus, the Department is entitled to recoup and/or collected \$ [REDACTED] from Respondent for overissued FAP benefits from March 1, 2017 to May 31, 2017.

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 not** 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 reduce the OI to \$ [REDACTED] for the period of March 1, 2017 to May 31, 2017, and initiate recoupment/collection procedures in accordance with Department policy, less any amounts already recouped and/or collected.



LG/kl

Laura Gibson
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

Via email



Respondent via USPS

