



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 1, 2017
MAHS Docket No.: 17-007075
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews (for Administrative Law Judge Gary Heisler)

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 October 19, 2017, from Lansing, Michigan. The hearing was held before Administrative Law Judge Gary Heisler and the hearing decision is issued by Administrative Law Judge Michael Crews, after thorough review of the hearing record, exhibits, and hearing request. 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 April 28, 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. The Department alleges that Respondent was aware of the responsibility not to sell, trade, giveaway, or sell to a retailer for cash or otherwise traffic FAP benefits.
5. The Department alleges that Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent was incarcerated in the [REDACTED] from September 2, 2015 through November 16, 2015.
7. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2015 through November 30, 2015 (fraud period).
8. During the fraud period, Respondent trafficked \$ [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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. On May 14, 2017, Respondent signed a Waiver of Disqualification Hearing and admitted to the facts as presented in the summary and that he understood that he would be disqualified from the FAP program without a hearing (Exhibit A, pp. 7-8).
11. Respondent did not return a signed IPV Repayment Agreement.
12. This was Respondent's first alleged IPV.
13. 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.

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.

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 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.

Trafficking is (i) the buying, selling, or stealing of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits; and (iv) attempting to buy, sell, or steal FAP benefits for cash or consideration other than eligible food. BAM 700 (May 2014), p 2.

In this case, although the total amount of the issued FAP benefits during the fraud period is less than \$500, here, the Department can request a hearing as it alleges that the Respondent committed an IPV of his issued FAP benefits by trafficking said benefits while he was incarcerated with no other authorized representative or payee in his group.

As stated above, Respondent signed a Waiver of Disqualification Hearing on May 14, 2017. Respondent admitted to the facts as presented in the Department's summary and indicated that he understood that he would be disqualified from the FAP program without a hearing.

Therefore, pursuant to the waiver of disqualification hearing signed by Respondent, he agreed that an IPV occurred in connection with his FAP case.

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 (October 2014), p. 15-16. 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, pursuant to the waiver of disqualification hearing signed by Respondent, he agreed to the 12-month disqualification under the FAP program.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The OI amount for a trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) as determined by (i) a court decision, (ii) the individual's admission, or (iii) documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store, which can be established through circumstantial evidence. BAM 720 (October 2014), p. 8. Otherwise, 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

The Department presented a purchase history showing the amount of benefits used during the applicable fraud period in which Respondent was incarcerated. According to the purchase history, the Department alleged a FAP OI in the amount of \$ [REDACTED] which is based on the FAP transactions that were alleged to have been trafficked by Respondent during his incarceration. However, the Department did not establish that Respondent received cash or consideration for his FAP benefits; therefore, the Department did not establish trafficking. Nevertheless, Respondent was not eligible for FAP benefits during his incarceration.

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 (July 2014), p. 8. A public nonmedical institution means a government-operated facility that does not provide medical care (e.g. jail or prison, juvenile detention, or secure short-term detention) BEM 265 (July 2015), p. 1. Residents of institutions are not eligible for FAP benefits unless one of the following is true: the facility is authorized by the Food and Consumer Service to accept FAP benefits, the facility is an eligible group living facility; or the facility is a medical hospital and there is a plan for the person's return home. BEM 212, p. 8.

Respondent admitted to the facts as presented in the Department's summary. The Department presented a verification of incarceration from the [REDACTED] concerning Respondent, identified by name and birth date, which confirmed that Respondent was incarcerated from September 2, 2015 through November 16, 2015. As such, the Department established that Respondent was a resident of an institution during the applicable fraud period (Exhibit A, p. 10). Further, there was no evidence that the location where Respondent was institutionalized fell within any of the qualifying conditions set forth above to be eligible for FAP. As such, Respondent was a

disqualified member of his FAP group and not eligible for FAP benefits issued to him during the fraud period. Because Respondent was the only member of his FAP group, he was ineligible for any of the FAP benefits issued to him during the fraud period.

To determine the first month of the overissuance period, the Department allows time for: 1) the client-reporting period, per BAM 105; 2) the full standard of promptness (SOP) for change processing per BAM 220; and 3) the full negative action suspense period. BAM 720 (October 2014), p. 7. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes in circumstance include, but are not limited to, the number of persons in the home or the status as an institutionalized individual and must be reported within 10 days after the client is aware of them. BAM 105 (July 2015), p. 10-11.

The evidence established that Respondent became incarcerated from September 2, 2015 through November 16, 2015. Therefore, rather than starting the OI periods in September 2015, the Department should have taken into account the 10 days allowed for Respondent to report his incarceration, the 10 days for the Department to process the change, and the 12 day negative action period. This would result in the OI period starting in November 2015.

The eligibility summary shows that, for the November 2015 OI period, Respondent was overissued \$ [REDACTED] in FAP benefits (\$ [REDACTED] monthly benefit from October 1, 2015 through November 30, 2015) (Exhibit A, p. 43). Therefore, the Department is entitled to recoup and/or collect a total of \$ [REDACTED] for the FAP OI.

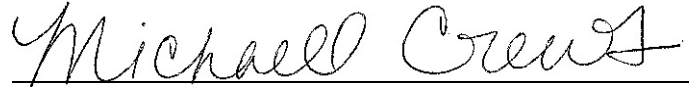
DECISION AND ORDER

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. Pursuant to the Waiver of Disqualification Hearing signed by Respondent, he agreed that an IPV occurred in connection with his FAP case.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to reduce the FAP OI to \$ [REDACTED] and initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amounts recouped/collected.

It is FURTHER ORDERED that Respondent is subject to disqualification from receipt of FAP benefits for a period of 12 months due to an IPV.



MC/kl

Michael Crews
Administrative Law Judge (for Administrative Law
Judge Gary Heisler)
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

