



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 15, 2017
MAHS Docket No.: 17-008206
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews

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 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 November 15, 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).

The Department requested a hearing alleging that Respondent committed an Intentional Program Violation (IPV) of Food Assistance Program (FAP) benefits and Family Independence Program (FIP) benefits. The Department further alleged an overissuance (OI) of Medicaid (MA) benefits. The Michigan Administrative Hearing System (MAHS) sent Respondent notice of the November 15, 2017 IPV hearing via first class mail at the address identified by the OIG in its hearing request. On November 15, 2017, subsequent to the hearing, the notice of the IPV hearing mailed to Respondent was returned to MAHS by the post office as undeliverable. Because there is evidence that Respondent did not receive proper notice of the November 15, 2017 hearing, the Department's hearing request as to FIP and MA must be dismissed. However, when notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16(e)(3); BAM 720, p. 12. Under the circumstances presented, the hearing could still proceed with respect to the alleged FAP IPV.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of Food Assistance Program (FAP) benefits?
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 May 26, 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 FAP benefits for ten years due to concurrent receipt of benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Pursuant to a Redetermination dated July 16, 2012, Respondent was advised that she could be prosecuted for fraud and/or required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid, or withheld facts which caused her to receive assistance that she should not have received or more assistance than she should have received.
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. The Department's OIG indicates that the time period it is considering the fraud periods are September 1, 2012 through October 31, 2012 and June 15, 2015 through November 30, 2015 (fraud periods).
7. During the fraud periods, Respondent was issued a total of \$ [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. The Department alleges that Respondent was issued FAP benefits from the State of Ohio while receiving FAP benefits from the State of Michigan during the fraud periods.
10. This was Respondent's first alleged IPV and the Department has requested a ten-year disqualification due to concurrent receipt of benefits.
11. A notice of hearing was mailed to Respondent at the last known address and was returned by the United States Postal Services as undeliverable on November 15, 2017 subsequent to the hearing.

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 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.

Change in Residency

In this case, the Department alleges that Respondent committed an IPV because she failed to inform the Department of her change in residency. Clients must report changes, such as changes in address, to the Department within 10 days after the client is aware of them. BAM 105 (September 2012), pp. 5-8; (April 2015), pp. 8-11. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2012) p. 1; (July 2014), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if she 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 (April 2012), pp. 2-3; (July 2014), p. 3.

The Department presented Respondent's IG-311 FAP transaction history which showed that, from July 24, 2012 to April 1, 2013 and from July 11, 2015 to November 29, 2015, Respondent used FAP benefits issued to her by the State of Michigan out-of-state (Exhibit A, pp. 93-97). While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits,

in order to establish an IPV based on a failure to report a change in address or residency, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing or maintaining benefit eligibility.

In support of its contention that Respondent committed an IPV, in addition to the transaction history showing Respondent's out-of-state use of FAP benefits, the Department presented a redetermination dated July 16, 2012 and a Notice of Case Action dated August 7, 2012 addressed to Respondent at a Michigan address (Exhibit A, p. 16). Subsequently, Respondent signed a one year residential lease agreement on October 4, 2012 for an apartment located at [REDACTED]. (Exhibit A, pp. 105-108). Although the lease did not list a city or state for the residence, the Department attached a CLEAR report, a collection of data concerning Respondents' name, reported addresses, licenses, and vehicle registrations. The CLEAR report supported the Department's position that Respondent was not a Michigan resident during the fraud periods (Exhibit A, pp. 110-111). Further, per the Department case comments, on October 30, 2012, Respondent informed the Department that she moved to [REDACTED] (Exhibit A, p. 104).

Respondent submitted an application to the Department on June 15, 2015 in which she provided a [REDACTED] address in [REDACTED] MI as her home address (Exhibit A, pp. 34-73). Respondent electronically signed the application confirming that her answers were correct and complete to the best of her knowledge (Exhibit A, p. 56). Subsequent to the June 15, 2015 application, Respondent's Ohio case worker informed the Department of the Respondent's move out of state (Exhibit A, p. 104).

Here, as of October 30, 2012, Respondent was residing in [REDACTED] however, she reported a Michigan residence to the Department in her June 15, 2015 application. Here, as Respondent submitted documentation to the Department listing a Michigan address subsequent to her residency in [REDACTED] the Department has established by clear and convincing evidence that Respondent intentionally withheld information concerning an out of state move for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility of FAP benefits. Therefore, the Department has established that Respondent committed an IPV as to her FAP benefits based on her failure to report a change in her residency.

Concurrent Benefits-FAP

The Department also alleged that Respondent committed an IPV because she received FAP benefits from the State of Michigan at the same time she received food assistance benefits from the State of [REDACTED]. A person cannot receive FAP benefits in more than one state for any month. BEM 222 (July 2013), p. 3; (June 2011), p. 2. For concurrent receipt of benefits, a person commits an IPV if she is found by administrative hearing process to have made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 11, 2011), p. 1; (January 2015), p. 1.

In support of its contention that Respondent committed an IPV due to concurrent receipt of FAP benefits, the Department presented email correspondence dated April 5, 2017 to the Department OIG from ██████████ Lock, Investigation Assistant with ██████████ Job and Family Services in ██████████. The Respondent was issued FAP benefits in Ohio from April 9, 2013 through April 1, 2015 and July 22, 2015 through December 12, 2015 (Exhibit A, pp. 86-92).

The Department also presented the Benefit Summary Inquiry which showed FAP benefits issued in Michigan to the Respondent from February 1, 2012 through October 31, 2012 and from June 15, 2015 through November 30, 2015 (Exhibit A, pp. 101-103).

As such, Respondent received food assistance benefits from ██████████ at the same time that she received FAP benefits in Michigan for the period from July 1, 2015 through November 30, 2015. Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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 (August 2012), p. 12-13; (October 2014), p. 15-16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statements regarding identity or residency, and, for all other IPV cases involving FAP, there is a standard disqualification period of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 13 and 16. A disqualified recipient remains a member of an active group as long as she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 12 and p. 16.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of food assistance benefits and lack of Michigan residency. However, in order to apply the ten-year disqualification due to concurrent receipt of benefits, the Department must establish that the client made fraudulent statements regarding identity or residency. BAM 720, p. 16.

In this case, the Respondent reported that she moved to ██████████ on October 30, 2012 (Exhibit A, p. 104). Respondent applied for food assistance benefits on April 9, 2013 in Ohio and was approved (Exhibit A, p. 78). However, while still residing in ██████████ and receiving benefits, Respondent submitted an application on June 15, 2015 to the Department for FAP benefits and reported that she was living in Michigan. As such, the evidence showed that Respondent made fraudulent statements regarding her identity or residency.

Therefore, the Department established that Respondent made a fraudulent statement regarding identity or residency for the purpose of obtaining concurrent FAP benefits. Therefore, Respondent is subject to a ten-year disqualification as to her FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 2011), p. 1; (May 2014), p. 1. In this case, the Department alleges that Respondent received an OI of FAP benefits. 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, pp. 6, 8; BAM 715 (July 2012), p. 5; (July 2014), p. 6; BAM 705, p. 5 and p. 6.

The Department alleged that Respondent received a \$ [REDACTED] FAP OI from September 1, 2012 through October 31, 2012 because she no longer resided in Michigan. Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1.

In consideration of out-of-state use that began July 24, 2012 and taking into account the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, the FAP OI period properly began September 1, 2012. BAM 720, p. 7. As such, Respondent was not eligible for any FAP benefits issued by the Department during the September 1, 2012 to October 31, 2012 fraud period based on her lack of Michigan residency.

The Department also alleged that Respondent received a \$ [REDACTED] FAP OI for the period from June 15, 2015 through November 30, 2015 due to concurrent receipt of benefits. A person cannot receive FAP benefits in more than one state for any month. BEM 222, pp. 3, 2. As discussed above, Respondent received food assistance benefits from [REDACTED] at the same time that she received FAP benefits in Michigan for the period from July 1, 2015 through November 30, 2015. As such, Respondent was not eligible for FAP benefits issued by the State of Michigan from July 1, 2015 through November 30, 2015. BEM 222, p. 3.

The benefit issuance summary established that, from July 1, 2015 through November 30, 2015, Respondent received \$ [REDACTED] in FAP benefits and \$ [REDACTED] in FAP benefits from September 1, 2012 through October 31, 2012 for a total of \$ [REDACTED] (Exhibit A, pp. 100-103).

Therefore, the Department is entitled to recoup and/or collect \$ [REDACTED] in FAP benefits for the June 15, 2015 through November 30, 2015 fraud period and \$ [REDACTED] in FAP benefits for the September 1, 2012 through October 31, 2012 fraud period.

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 as to her FAP benefits.

2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED] for the June 15, 2015 through November 30, 2015 fraud period and an OI of FAP benefits in the amount of \$ [REDACTED] for the September 1, 2012 through October 31, 2012 fraud period.

The Department is ORDERED to do the following in accordance with Department policy:

1. Reduce the FAP OI to \$ [REDACTED] for the fraud period of June 15, 2015 through November 30, 2015 and initiate recoupment and/or collection procedures, less any amounts that have already been recouped and/or collected; and
2. Initiate recoupment and/or collection procedures for the FAP OI amount of \$ [REDACTED] for the fraud period of September 1, 2012 through October 31, 2012, less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent is subject to disqualification from the receipt of FAP benefits for a period of 10 years due to an IPV.

MC/kl



Michael Crews

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

MDHHS-Wayne-31
OIG
RECOUPMENT
MAHS

Respondent via USPS

