



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.: 17-009339
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M T Marler

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 November 22, 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 the 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 June 12, 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 all changes including her address to the Department.
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 August 17, 2016 through December 12, 2016 (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** 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), p. 5.12-13; ASM 165 (August 2016).

As a preliminary matter, after the current hearing was scheduled, the Michigan Administrative Hearing System (MAHS) mailed Respondent the Notice of Disqualification Hearing (Notice) via first class mail at the address identified by the Department as Respondent's address. Before the hearing, the Notice was returned to MAHS by the United States Postal Service as undeliverable. At the hearing, the Department testified that after conducting an address search, it concluded that the address provided to MAHS for Respondent was the most current address. 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, where there was no evidence presented that Respondent had a more recent mailing address and where the Department's investigation led it to conclude that the address provided to MAHS for the Notice of Hearing was the best available address for Respondent, the hearing proceeded with respect to the alleged FAP IPV.

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), 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. 11.

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 alleges that the Respondent committed an IPV of her FAP benefits by trafficking her FAP benefits while she was incarcerated. Trafficking is (i) the buying or selling 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; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700 (October 2016), p 2.

The Respondent was confirmed to have been incarcerated from August 16, 2016 through December 15, 2016. While incarcerated, she was issued \$ [REDACTED] in benefits each month from August 2016 through December 2016. Her FAP benefits were used between August 22, 2016 and December 12, 2016 for purchases totaling \$ [REDACTED]

The Department's evidence shows that clearly someone used the Respondent's FAP benefits while she was incarcerated. However, based on Department policy, a finding of FAP benefit trafficking requires more than allowing someone outside of the FAP benefit group to use FAP benefits. Department policy requires "cash or consideration" in exchange for use of the FAP benefits. BAM 700, p. 2. Department policy does not define "consideration", but it is generally defined as something of value that is bargained for by a party as part of a contract. The requirement of "cash or consideration" requires the Department to establish that Respondent received something of value for use of her FAP benefits; no evidence of cash or consideration was presented by the Department.

Reviewing all of the facts, policies, and law in this case, the Department has not shown by clear and convincing evidence that the Respondent trafficked benefits for cash or consideration while incarcerated; therefore, no IPV has been established.

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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, as mentioned above, the Department has not met its burden of proof to establish by clear and convincing evidence that the Respondent committed an IPV. Therefore, the 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. The OI amount for a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, 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 (October 2015), p. 8. Jail, prison, juvenile detention and secure short-term detention are included in the definition of an institution. 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 was incarcerated from August 16, 2017 through December 15, 2016. There was no evidence that the location where she was institutionalized fell within any of the qualifying conditions set forth in policy. BEM 212, p. 8. The Department presented a FAP purchase history showing that Respondent's benefits were used during the alleged fraud period. According to the application, Respondent was the only member of her FAP group and was incarcerated during the alleged fraud period; therefore, she was not eligible for any of the benefits issued to her during the period of incarceration.

The Department requested an OI in the amount of \$ [REDACTED] for the time period of August 17, 2016 through December 12, 2016. To determine the first month of the overissuance period the Department allows time for: (i) the client reporting period, per BAM 105; (ii) the full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (January 2016), p. 5. Based on the above policy, the Respondent had until August 26,

2016 to report her incarceration, the Department had until September 5, 2016 to process, and then an additional 12 days would have been provided for the negative action suspension period to establish an OI beginning October 1, 2016. BAM 715, p. 5. Since the Respondent was issued benefits in the amount of \$ [REDACTED] each month for October through December of 2016, the Respondent had an OI of \$ [REDACTED]. Therefore, the Department may recoup/collect \$ [REDACTED] from Respondent for the overissuance of FAP benefits.

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 **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period October 2016 through December 2016, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent is **not** subject to a period of disqualification as a result of an alleged IPV.

AM/kl



Amanda M T Marler
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

[REDACTED]

Respondent via USPS

[REDACTED]