



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 27, 2017
MAHS Docket No.: 17-009497
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 December 11, 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) by receiving concurrent 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 June 21, 2017 to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly received concurrent program benefits and, as such, committing an IPV.
2. The OIG has requested that Respondent be disqualified for 10 years for concurrent receipt of FAP program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was advised at the time he applied for benefits that he could not receive concurrent benefits.
5. Respondent had no apparent physical or mental impairment that would limit the understanding that he could not receive dual assistance.
6. The OIG indicates that the time period they are considering the fraud period (fraud period) is December 1, 2015 to March 31, 2016.
7. During the fraud period, the Department alleges that Respondent was receiving food assistance benefits issued by the State of Georgia while receiving FAP benefits issued by the State of Michigan.
8. The Department alleges that during the fraud period Respondent was issued [REDACTED] in FAP benefits from the State of Michigan but was eligible to receive \$0 in FAP benefits.
9. The Department alleges that during the fraud period Respondent received a FAP OI in the amount of [REDACTED]
10. This was Respondent's first alleged FAP IPV, and the Department has requested a 10-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 US Post Office 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 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 (January 2016), p. 5.

Notice of the IPV hearing sent to Respondent by the Michigan Administrative Hearing System (MAHS) was returned as undeliverable. The Department testified that the address to which notice was sent was the best available address. Accordingly, the FAP hearing proceeded. BAM 720, p. 12.

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 his reporting responsibilities, and

- The client has no apparent physical or mental impairment that limits his or his understanding or ability to fulfill reporting responsibilities.
BAM 700 (October 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.

In this case, the Department alleges that Respondent committed an IPV because he received FAP benefits from the State of Michigan at the same time he received food assistance benefits from the State of Georgia. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3.

In support of its IPV allegations, the Department presented an application for FAP benefits that Respondent submitted to the Department on October 9, 2015; a benefit summary inquiry showing that Respondent received FAP benefits from the State of Michigan during the fraud period; an application for food assistance benefits that Respondent submitted to the State of Georgia on November 19, 2015 in which he denied receiving any benefits from another state; a transaction history showing that Respondent used his Michigan-issued FAP benefits exclusively in Georgia beginning October 22, 2015; an email from the [REDACTED] showing that Respondent received food benefits issued by the State of Georgia from November 2015 through May 2017; and a computer printout provided by the State of Georgia showing it issued food assistance benefits to Respondent between November 19, 2015 and March 2016.

The evidence presented establishes that from December 1, 2015 through March 31, 2016, Respondent received Michigan-issued FAP benefits and, during the same period, received food assistance benefits issued by the State of Georgia. The evidence presented established that Respondent misrepresented his circumstances for the purpose of obtaining FAP eligibility in Georgia and failed to report his change in residency to the Department in Michigan. As a result, he received dual food benefits. 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, p. 15. Clients are disqualified

for ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, and, for all other IPV cases involving FAP, 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt food assistance benefits from two states at the same time. In order to apply the ten-year disqualification for concurrent receipt of benefits, the Department must establish that the client made fraudulent statements regarding identity or residency. BEM 720, p. 16. In this case, in the Georgia application, Respondent responded that he was not receiving food assistance from another state even though he had been approved for FAP benefits by the State of Michigan and was using those benefits in Georgia. However, there was no evidence that Respondent misrepresented his identity or his Georgia residence in his Georgia application. Because the evidence does not show that Respondent made fraudulent statements regarding his residence or identity, Respondent is subject to the standard one-year disqualification from FAP.

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 a [REDACTED] overissuance during the fraud period based on Respondent's concurrent receipt of benefits. The benefit summary inquiry presented by the Department showed that during the fraud period, Respondent received [REDACTED] in FAP benefits from the State of Michigan. As discussed above, Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he was issued food assistance benefits by the State of Georgia. BEM 222, p. 3. The evidence showed that, during the fraud period, Respondent received food assistance benefits from the State of Georgia as well as FAP benefits from the State of Michigan. Because Respondent was not eligible for concurrent receipt of benefits, he was not eligible for any of the FAP benefits issued during the fraud period.

Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits from December 1, 2015 to March 31, 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, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV concerning FAP.
2. Respondent **did** receive an OI of FAP program benefits in the amount of [REDACTED] for the period December 1, 2015 to March 31, 2016.

The Department is ORDERED to do the following:

1. initiate recoupment/collection procedures in accordance with Department policy for the FAP OI amount of [REDACTED], less any amounts that have already been recouped/collected, for the period December 1, 2015 to March 31, 2016; and
2. disqualify Respondent from FAP for a period of **12 months**.



AE/tm

Alice C. Elkin

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

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