



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 4, 2018
MAHS Docket No.: 17-009509
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews

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 7, 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 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 June 20, 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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. The Department alleged that Respondent was aware of the responsibility to report changes in address and residency.
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 responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is from November 1, 2015 through February 29, 2016.
7. The Department alleges that, during the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, but she was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that, during the fraud period, Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged FAP IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not 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.

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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 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.

In this case, the Department alleges that Respondent committed an IPV concerning her FAP benefits because she failed to report an address and residency change outside of the State of Michigan in order to receive FAP benefits. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. For FAP purposes, a person is considered a resident while living in 17-015487Michigan 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 thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 2015), p. 3.

In order to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information regarding her address and residency for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. See 7 CFR 273.16(e)(6); 7 CFR 273.16(c).

In support of its IPV case against Respondent, the Department presented an application electronically signed by Respondent and submitted on March 29, 2015 in which she acknowledged her rights and responsibilities to report changes to the Department (Exhibit A, p. 10-34). The application listed a Michigan address (Exhibit A, p. 12).

The Department presented a Respondent's FAP transaction history which showed that Respondent used her FAP benefits in [REDACTED] from August 16, 2015 through December 21, 2015 (Exhibit A, pp. 40-41). The Department also presented a Work Number Inquiry concerning Respondent, who was identified by birthdate as set forth in her March 29, 2015 application. The inquiry showed Respondent's employment with Comcast from September 14, 2015 through May 31, 2017 and an address for Respondent in [REDACTED] [REDACTED] (Exhibit A, p. 35).

While this evidence may be sufficient to establish that Respondent did not reside in Michigan and may not be eligible for FAP benefits, the Department acknowledged that Respondent had not submitted any documentation to the Department alleging a Michigan address during the fraud period. While Respondent was aware of her obligation to report changes in address and residency, the fact that she failed to report her out-of-state move did not establish by clear and convincing evidence that she intentionally misrepresented or withheld information concerning her residency for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

Under these circumstances, the Department has not established that Respondent committed an IPV concerning her 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, p. 15-16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits. For all other IPV cases involving FAP, the standard disqualification period is 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 she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Thus, Respondent is not subject to a 12-month disqualification from her receipt of FAP benefits on the basis of an IPV.

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 (October 2015), p. 6; BAM 705 (October 2015), p. 6.

In this case, the Department alleged a \$716.00 FAP OI during the fraud period based on Respondent's lack of Michigan residency. As discussed above, a client must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220, p. 1. The FAP transaction history showing Respondent's out of state usage from August 16, 2015 to December 21, 2015, coupled with Respondent's out of state employment from September 14, 2015 through May 31, 2017, was sufficient to establish that Respondent was not residing in Michigan during the fraud period. BEM 212, p. 3.

In consideration of out-of-state usage that began August 16, 2015, 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 would begin on October 1, 2015. BAM 720, p. 7. However, instead of using the out-of-state usage date, the Department began with the Respondent's employment date of September 14, 2015 and, after taking into account the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, the Department started the FAP OI period on November 1, 2015.

As such, the benefit summary inquiry showed that, during the November 1, 2015 to February 29, 2016 fraud period, Respondent received \$ [REDACTED] in FAP benefits (Exhibit A, p. 39). Because Respondent was not living in Michigan during the fraud period, her household was not eligible for any of the FAP benefits issued during this period.

Thus, the Department is entitled to recoup and/or collect \$716.00 from Respondent for overissued FAP benefits during the fraud period as alleged by the Department.

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 initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amounts already recouped/collected.



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



Respondent via USPS

