



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 3, 2017
MAHS Docket No.: 17-009563
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Laura Gibson

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 1, 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)?
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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in his circumstances to the Department, such as changes in address and residency.
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 May 1, 2015 to December 31, 2015 (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. The Department alleges that Respondent was issued food assistance benefits from the State of Ohio while receiving FAP benefits issued from the State of Michigan from May 2015 to October 2015.
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 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.

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), pp. 5, 12-13; ASM 165 (August 2016).

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 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 of his FAP benefits because he failed to report to the Department that his address changed and that he no longer resided in Michigan, but continued to receive and use Michigan issued FAP benefits while living out of state, causing an OI of FAP benefits. Clients must report changes, such as changes in address to the Department within 10 days after the client is aware of them. BAM 105 (April 2015 and July 2015), pp. 8-11. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 2014), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he 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 (July 2014 and October 2015), pp. 2-3.

The Department also alleged that Respondent committed an IPV of the FAP because he received FAP benefits from the State of Michigan at the same time he received food assistance benefits from the State of Ohio. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 4.

The Department presented Respondent's IG-311 FAP transaction history which showed that from April 19, 2015 to December 30, 2015, Respondent used FAP benefits issued to him by the State of Michigan out-of-state (Exhibit A, pp. 49-52). While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits, 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, the Department presented an assistance application that was submitted by Respondent on May 2, 2013, prior to the alleged fraud period and period of out-of-state use, on which Respondent reports that he lives in Michigan. (Exhibit A, pp. 10-40). This may be sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances; however, it does not establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning an out-of-state move for the purpose of establishing or maintaining his Michigan FAP eligibility. Thus, the Department has not established by clear and convincing evidence that Respondent

committed an IPV of FAP benefits based on his failure to report a change in his residency.

With respect to the concurrent receipt of FAP benefits, the Department presented documents obtained from a collateral contact made with authorities in the State of Ohio which establish that Respondent was issued food assistance benefits by the State of Ohio from May 2015 to October 2015 (Exhibit A, pp. 41-47). The FAP benefit summary inquiry provided shows that Respondent was issued FAP benefits from the State of Michigan during the fraud period of May 2015 to December 2015 (Exhibit A, p. 48).

The evidence presented establishes that between May 2015 and October 2015, Respondent received Michigan-issued FAP benefits and during this same period, received food assistance benefits issued by the State of Ohio. 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 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 of food assistance benefits from two states at the same time. In order to apply the ten-year disqualification for concurrent receipt of benefits however, the Department must establish that the client made fraudulent statements regarding identity or residency. BEM 720, p. 16.

In this case, in his May 2, 2013 application for Michigan FAP benefits, Respondent reported that he was living in Michigan and was approved for Michigan issued FAP benefits. The evidence showed that Respondent used his FAP benefits in Michigan after his application was approved. The Department did not present any additional assistance applications from the State of Michigan or from the State of Ohio completed during the fraud period on which Respondent made fraudulent statements regarding his identity or residency. Thus, under these facts, the Department failed to present evidence that Respondent made a fraudulent statement regarding identity or residency for the purpose of obtaining concurrent benefits. Therefore, Respondent is not subject to a ten-year disqualification. However, he is subject to the standard one-year disqualification from receipt of FAP benefits based on concurrent receipt of benefits.

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 that Respondent received a [REDACTED] FAP overissuance for the period between May 2015 and December 2015 based on his concurrent receipt of food assistance benefits and based on his lack of Michigan residency. 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 Ohio. BEM 222, p. 3. Additionally, clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented sufficient documentation to establish that Respondent did not reside in Michigan and was not eligible for any FAP benefits issued by the Department during the fraud period. The Department further established that Respondent received food assistance benefits from two states for the months of May 2015 to October 2015.

Because Respondent was not eligible for any of the FAP benefits issued during the fraud period, the Department is entitled to recoup and/or collect \$643 from Respondent for overissued 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** 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 and/or collected.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of **12 months**.



LG/kl

Laura Gibson
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

