



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 30, 2018
MAHS Docket No.: 17-009352
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 January 3, 2018, 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).

As a preliminary matter, after the current hearing was scheduled, the Michigan Administrative Hearing System (MAHS) sent Respondent notice of the January 3, 2018 IPV hearing via first class mail at the address identified by the Department as Respondent's most recent address. Prior to the hearing, the notice of the IPV hearing mailed to Respondent was returned to MAHS by the post office 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 as of December 18, 2017. 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 only. Further, the Department's request as to MA benefits is hereby **DISMISSED**.

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 9, 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. The Department alleges that Respondent was aware of his 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 requirement.
6. The Department's OIG indicates that the time period it is considering the fraud periods is April 1, 2016 through June 30, 2016 (fraud period).
7. During the fraud period, Respondent was issued a total of [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 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 on December 11, 2017.

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 he failed to inform the Department of his change in address and 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 (April 2016), pp. 11-12. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2016) 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 (October 2015), p. 3.

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 regarding his address and residency for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

In support of its IPV case against Respondent, the Department presented an application signed by Respondent electronically on September 11, 2015 in which he acknowledged his rights and responsibilities to report changes to the Department (Exhibit A, p. 21). The application listed a Michigan address (Exhibit A, p. 13).

The Department also presented Respondent's IG-311 FAP transaction history which showed that, from December 21, 2015 to December 28, 2015, Respondent used his FAP benefits in Michigan and then, from January 21, 2016 to July 21, 2016, Respondent used his FAP benefits exclusively in Florida (Exhibit A, pp. 42-46).

The Department also presented a Work Number Inquiry concerning Respondent, who was identified by a [REDACTED] and birthdate. The birthdate matched the information set forth in Respondent's September 11, 2015 application. The inquiry showed that Respondent was employed in [REDACTED] for three months beginning February 16, 2016. Further, the pay period summary included in the Work Number showed wages for Respondent from February 21, 2016 through May 1, 2016 (Exhibit A, p. 48).

Here, the Department established that Respondent resided in Florida as of January 21, 2016 based on his employment in Florida approximately one month later; however, 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 his obligation to report changes in address and residency, the fact that he failed to report his out-of-state move did not establish by clear and convincing evidence that he intentionally misrepresented or withheld information concerning his 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 his 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 he 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 his 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 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a [REDACTED] 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 that Respondent was using his FAP benefits entirely out of state from January 21, 2016 through July 21, 2016 was sufficient to establish that Respondent was not residing in Michigan during the fraud period. BEM 212, p. 3.

In consideration of Respondent's employment in Florida starting on February 16, 2016 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 April 1, 2016. BAM 720, p. 7. The benefit summary inquiry presented by the Department showed that during the fraud period, Respondent received [REDACTED] in FAP benefits (Exhibit A, p. 39). Because Respondent was not living in Michigan during the fraud period, his household was not eligible for any of the FAP benefits issued during this period.

Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits during the 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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive a FAP OI in the amount of [REDACTED]
3. The Department's MA hearing request is **DISMISSED**.

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/tm



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

DHHS

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