



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 16, 2018
MAHS Docket No.: 17-010182
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 9, 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).

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 12 months?

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 27, 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 accurate information to the Department and to use his FAP benefits for lawful purposes.
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 February 1, 2014, through February 28, 2015 (fraud period 1); March 1, 2015, through July 30, 2015 (fraud period 2); May 1, 2016, through May 30, 2016 (fraud period 3); and October 1, 2016, through October 31, 2016 (fraud period 4).
7. During fraud period 1, Respondent was issued \$ [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. During fraud period 2, Respondent was issued \$ [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.
9. During fraud period 3, Respondent was issued \$ [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.
10. During fraud period 4, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to \$91 in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] during all fraud periods.
12. This was Respondent's first alleged IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was returned by the United States Postal Service 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 (October 2016), pp. 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 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.

Absconder

In this case, the Department alleges that Respondent committed an IPV by misrepresenting his circumstances by failing to disclose that he was an absconder and in violation of his probation sentence. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (January 2015), p. 9. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2014 and October 2015), p. 1. A person who violates a condition of probation or parole imposed under a federal or state law is disqualified from receipt of FAP benefits and the disqualification continues as long as the violation occurs. BEM 203, pp. 1-2.

In support of its contention that Respondent committed an IPV, the Department presented a Motion, Affidavit and Bench Warrant, showing Respondent was in violation of his probation as of January 17, 2014. The Department also presented a Register of Actions, which showed the bench warrant was recalled on February 23, 2015. The Department also presented an application submitted by Respondent on September 13, 2013. The Department asserts that when completing the application process, Respondent acknowledged that he had received the Information Booklet advising his regarding “Things You Must Do” which explained reporting change circumstances.

The Department also presented an application submitted by Respondent on September 15, 2014. In the application, Respondent was asked if he had any drug-related felonies, to which he answered "no." The Department asserted that during the application process, an applicant is asked a compound question to determine if they have a drug-related felony and if they are in violation of probation or parole. The Department asserted Respondent answered "no" to both questions, and therefore, provided false information regarding his absconder status. However, the application presented only shows Respondent was questioned regarding any drug-related felonies, not his probation or parole status. As the Department failed to provide evidence that Respondent affirmatively denied he was in violation of his probation/parole, the Department did not present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits due to his failure to report his absconder status.

Incarceration

In this case, the Department also alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department when he became incarcerated. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented a Register of Actions. The Register of Actions shows that Respondent began serving a period of incarceration that was to last a minimum of six months on March 6, 2015. The Department also presented an application submitted by Respondent on September 15, 2014. The Department asserts that when completing the application process, Respondent acknowledged that he had received the Information Booklet advising his regarding "Things You Must Do" which explained reporting change circumstances.

Respondent first notified the Department of his incarceration when he sent a letter stating he was incarcerated on July 6, 2015, which was submitted by the Department. The Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits. While it appears that Respondent failed to report that he was incarcerated within 10 days, the Department did not provide any evidence that Respondent's failure to report his incarceration was intentional, as opposed to an inadvertency or oversight. Accordingly, the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits based on his failure to report his incarceration.

Trafficking

In this case, the Department also alleges that Respondent committed an IPV by offering to purchase FAP benefits through a posting on his Facebook account. 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 (May 2014), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2015), p. 66. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2015), p. 3. The federal regulations define trafficking to include “attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2.

In support of its contention that Respondent trafficked his FAP benefits, the Department presented copies of different postings on [REDACTED] from “[REDACTED]” stating, “stamps for sale” and “need to sell my food stamps early [REDACTED] for the hole [REDACTED]”. The Department contended that Respondent was the individual responsible for making the Facebook posts. The Department presented another post made by the same account on [REDACTED], stating “Somebody fire up its my bday.” According the applications presented by the Department, Respondent’s Birthday is [REDACTED]. Additionally, the Department presented another [REDACTED] post by the same account containing a picture. The Department also submitted biographical information from the Michigan Department of Corrections, which contains a picture and physical description of Respondent. The individual in the picture posted by “[REDACTED]” matches the photograph and physical description of Respondent, including a tattoo on the upper right chest that states, “[REDACTED]”. Therefore, the Department presented sufficient evidence that the [REDACTED] account belonged to Respondent. The verbal offer of sale to another individual is evidence that the Respondent committed an IPV. Thus, the Department provided clear and convincing evidence that Respondent trafficked his FAP benefits and committed an IPV.

Income

In this case, the Department also alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department of his income from employment. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application for FAP benefits submitted by Respondent on September 29, 2016. In the application, Respondent reported that he did not have any income from employment. Additionally, the Department presented Case Comments, which show that an interview with Respondent was held on September 30, 2016, at which he stated he did not have any income.

Additionally, the Department presented a verification of employment that was submitted by Respondent's employer. The income verification shows that Respondent was employed prior to the September 29, 2016 application and was being paid during the entire fraud period. Given that the application was submitted while Respondent was employed, the Department has established by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits. Therefore, Respondent committed an IPV.

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 10 years for a FAP IPV involving concurrent receipt of benefits, 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. Because this is Respondent's first IPV, Respondent is subject to a one-year disqualification from his receipt of FAP 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.

Absconder

Although the Department failed to establish Respondent committed an IPV based on his failure to report his absconder status, the Department did establish that Respondent was in absconder status from January 17, 2014, through February 23, 2015. As discussed above, Respondent, based on his probation absconder status, was a disqualified member of his FAP group and not eligible for FAP benefits issued to him during the fraud period. Because Respondent was the only member of his FAP group, he was ineligible for any of the FAP benefits issued to him during the period he was in

absconder status. The benefit summary inquiry presented by the Department shows that during the period of February 2014 through February 2015, Petitioner was issued \$ [REDACTED] in FAP benefits. As Respondent was not entitled to FAP benefits during that period, the Department established that Respondent was overissued \$ [REDACTED] in FAP benefits.

Incarceration

Although the Department failed to establish Respondent committed an IPV based on his failure to report his incarceration, the Department did establish that he was incarcerated from March 2015 through July 2015. 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 (January 2017), 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 (see BEM 615), or the facility is a medical hospital and there is a plan for the person's return home. BEM 212, p. 8. The Respondent was incarcerated from March 2015 through July 2015; and there was no evidence that the location where he was institutionalized fell within one of the qualifying conditions set forth in BEM 212, p. 8. Therefore, Respondent was not eligible to receive benefits during the period of his incarceration. Based on Respondent's FAP group size of one, the Department established that Respondent was not entitled to benefits during his period of incarceration.

In support of its contention that Respondent was overissued FAP benefits, the Department presented Respondent's FAP benefit summary, which showed he was issued \$ [REDACTED] in FAP benefits between March 2015 and July 2015. As Respondent was not entitled to benefits during that time period, the Department established he was overissued FAP benefits in the amount of \$ [REDACTED].

Trafficking

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or (iii) documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store, which can be established through circumstantial evidence. BAM 720, p. 8.

As discussed above, the Department presented clear and convincing evidence that Respondent trafficked his benefits by selling them on [REDACTED]. Both [REDACTED] posts that Respondent made to sell his FAP benefits were posted in [REDACTED]. The Department presented Respondent's benefit summary which showed he was issued

\$ [REDACTED] in [REDACTED]. Therefore, Respondent was not entitled to FAP benefits during May 2016, and thus, received an overissuance of \$ [REDACTED] in FAP benefits.

Income

The Department has alleged that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period 4. The Department submitted overissuance budgets which revealed that Respondent was entitled to \$ [REDACTED] in FAP benefits during the fraud period 4. Respondent failed to appear at the hearing and therefore failed to provide evidence that the earned income was reported. Accordingly, the Department has established that an overissuance occurred in the amount of \$ [REDACTED] and it is therefore entitled to recoup that amount for FAP benefits it issued to Respondent during the fraud period 4.

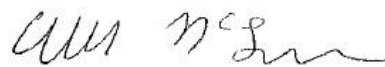
DECISION AND ORDER

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 program benefits in the amount of \$ [REDACTED]

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

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



EM/

Ellen McLemore

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

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]