



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 27, 2018
MAHS Docket No.: 17-011967
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 February 22, 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 the FAP?

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 July 28, 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 any changes in circumstances to the Department including changes in address or residency.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using her FAP benefits outside of the State of Michigan on February 15, 2017.
7. The Department's OIG indicates that the time period it is considering the fraud period is February 2017 through July 2017 (fraud period).
8. 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.
9. During the alleged fraud period, Respondent was issued Supplemental Nutrition Assistance Program (SNAP) benefits from the State of Florida.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
11. This was Respondent's **first** alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and **was not** 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 (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 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 (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 because she received FAP benefits from the State of Michigan at the same time she received SNAP benefits from the State of Florida. SNAP benefits are the equivalent of FAP benefits in the State of Florida. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. A person commits an IPV if he/she is found by administrative hearing process to have made a fraudulent statement or representation regarding their identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1. Furthermore, the Department alleges that she received FAP benefits from the State of Michigan when she was no longer a Michigan resident and failed to notify the Department of her change in residency as required. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2016), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he/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 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 2015), p. 3.

To support the allegations of an IPV, the Department presented an application for FAP benefits dated September 23, 2016, on which the Respondent provided a Michigan address for mailing purposes despite being homeless, and acknowledged her responsibility to update the Department with changes in circumstances. The Department also provided an IG-311 Electronic Benefit Transfer (EBT) History which shows the Respondent's EBT transaction history exclusively in Florida from February 15, 2017, through May 30, 2017. Next, the Department provided an email from My Florida Families, the Department of Health and Human Services equivalent in Florida, which indicated that Respondent received Florida-issued SNAP benefits from February 2017 through June 2017. Finally, the Department provided a LexisNexis Report showing multiple addresses for Respondent during the fraud period.

The evidence presented establishes that Respondent applied for Michigan-issued FAP benefits in September 2016, then applied and began receiving SNAP benefits in Florida beginning February 2017. The Department did not present any evidence of communications, applications, or other representations during the fraud period made to Michigan or to Florida about her residency or identity. In order to be disqualified for an IPV as a result of concurrent receipt of benefits, the Respondent must have made a fraudulent statement or representation regarding her identity or residence in order to receive food assistance benefits in multiple states. BEM 203, p. 1. Therefore, the Department has not shown that Respondent is subject to an IPV for receipt of concurrent benefits. BEM 203, p. 1.

Despite insufficient evidence for an IPV related to concurrent receipt of benefits, the evidence demonstrates that Respondent was no longer a resident of the State of Michigan but instead a resident of Florida as shown by her Florida addresses, Florida

SNAP benefits, and EBT spending. In addition, the length of time that she was receiving concurrent benefits in addition to the length of time for which she used her Michigan-issued FAP benefits in Florida is sufficient to establish Respondent's intentional decision not to inform the Department of her move. Considering all of the evidence together, the Respondent failed to update her address with the Department as required so that she could continue receiving Michigan-issued FAP benefits. Therefore, the Department has established by clear and convincing evidence that Respondent has committed an IPV based upon her failure to report a change in residence to the Department.

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 not established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of FAP benefits from Michigan and Florida. However, the Department did establish that Respondent committed an IPV by failing to report a change in her residence. Accordingly, she is subject to a one-year disqualification from 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 (October 2015), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a \$ [REDACTED] OI during the fraud period based on Respondent's concurrent receipt of benefits and receipt of benefits without Michigan residency from February 2017 through July 2017. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she received food assistance benefits issued by the State of Florida. BEM 222, p. 3. Likewise, Respondent was eligible for food assistance benefits from the State of Michigan only if she was residing in Michigan. BEM 220, p. 1.

The Benefit Summary Inquiry presented by the Department showed that during the fraud period, Respondent received \$ [REDACTED] in total FAP benefits. (Exhibit A, p. 78). Of the total FAP benefits issued, \$ [REDACTED] is attributable to the period from February 2017 through June 2017 while Respondent was receiving concurrent benefits. The remaining \$ [REDACTED] is attributable to July 2017 when the Department is alleging that Respondent was not a Michigan resident.

A person cannot receive FAP in more than one state for any month. BEM 222, p. 3. Since the Respondent first began receiving concurrent benefits in February 2017, the Department properly began the OI period in February 2017. After the period of concurrent benefits, the Respondent continued to receive Michigan issued benefits. However, no evidence was presented regarding Respondent's residency in July 2017. The receipt of Florida benefits ended in June 2017. The LexisNexis Report lists the last address for Respondent in June 2017. The EBT History of Michigan-issued FAP benefits being used in Florida ends in May of 2017. Without some additional evidence, the Department has not met its burden of proof to establish an OI for July 2017. Despite the failure to present evidence regarding July 2017, the Department's OI request totals the amount of benefits for February through June of 2017. Therefore, no adjustment is necessary for the total OI.

After a review of the evidence, the Department is entitled to recoup and/or collect the OI of FAP benefits in the amount of \$ [REDACTED] from Respondent for overissued FAP benefits from February 2017 through July 2017.

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 **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period February 2017 through July 2017, and initiate recoupment/collection procedures in accordance with Department policy.

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



AM/

Amanda M. T. Marler
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]
[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
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