



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 22, 2018
MAHS Docket No.: 17-015678
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 14, 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 October 31, 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 residency or address to the Department.
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 March 2016 through June 2016 (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. This was Respondent's **second** alleged IPV.
10. 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 (October 2017), 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 concerning her FAP benefits because she intentionally failed to update her residency with the Department in order to receive FAP benefits from the State of Michigan while living in South Carolina and then continued to use her FAP benefits while out of state. 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 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 October 14, 2015, on which the Respondent provided a Michigan address, acknowledged her responsibility to update the Department with a new address, and left blank the question of whether she was a Michigan resident or if she intended to remain a Michigan resident. The Department also provided an IG-311 EBT History which shows the Respondent's EBT transaction history almost exclusively in South Carolina from January 26, 2016, through July 2, 2016, with a few exceptions in Virginia. Finally, the Department provided a Clear Report showing an address in South Carolina until March 2016, a deed transfer and mortgage record in South Carolina, and a vehicle registered to Respondent in South Carolina. In this case, the Department has provided adequate proof that the Respondent was living in South Carolina during the fraud period.

The Department must also establish that a client intentionally made a misleading statement or withheld facts. 7 CFR 273.16(c)(1). In this case, due to the proximity in time of the Respondent's application for benefits and her move to South Carolina, and her failure to identify a Michigan residency or intention to remain as a Michigan resident on the application, the evidence shows that Respondent intentionally withheld information from the Department in order to continue receiving FAP benefits. Therefore, the Department has shown by clear and convincing evidence that 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 FIP, FAP or SDA, 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. Since this is the Respondent's second IPV, she is subject to a 24-month FAP benefits disqualification on the basis of an IPV. (Exhibit A, p. 60).

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] OI for March 2016 through June 2016 based upon 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 shows that Respondent was using her FAP benefits exclusively outside of Michigan beginning January 26, 2016. The transaction history and Clear Report were sufficient to establish that Respondent was not residing in Michigan during the fraud period. BEM 212, p. 3.

To determine the first month of the OI period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (July 2014), p. 5. In consideration of out-of-state use that began January 26, 2016, the Department properly began the OI period as of March 1, 2016. BAM 715, p. 5.

The FAP Benefit Summary Inquiry presented by the Department showed that from March 2016 through June 2016, Respondent received \$ [REDACTED] in FAP benefits. Since Respondent was not living in Michigan during the OI period, she was not eligible for any of the FAP benefits issued during this period.

Thus, the Department has met its burden of proof by a preponderance of the evidence and is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits between May 2016 and June 2016.

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 initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 24 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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