



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: March 16, 2018
MAHS Docket No.: 17-010825
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on February 13, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED] [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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (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. On an application for assistance dated September 22, 2015, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-17.

2. Respondent acknowledged under penalties of perjury that her September 22, 2015, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 17.
3. On an application for assistance dated June 21, 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 19-42.
4. Respondent acknowledged under penalties of perjury that her June 21, 2016, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 41.
5. Respondent reported on her June 21, 2016, application for assistance that she was living in Michigan and that she was not receiving food assistance from another state. Exhibit A, pp 19-42.
6. The Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from November 1, 2015, through May 31, 2016. Exhibit A, pp 46-47.
7. Respondent began using her Food Assistance Program (FAP) benefits in [REDACTED] on October 8, 2015 and used them exclusively in Virginia through March 30, 2016. Exhibit 5 A, pp 48-50.
8. The Respondent received Food Assistance Program (FAP) benefits from the state of [REDACTED] from October of 2015, through May of 2016. Exhibit A, p 45.
9. On July 24, 2017, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826).
10. The OIG has requested that Respondent be disqualified from receiving program benefits.
11. The Department's OIG filed a hearing request on July 24, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

Overissuance

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2016), p 3.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the Food Assistance Program (FAP) while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2016), p 1.

A person cannot receive FAP in more than one state for any month. BEM 220.

On an application for assistance dated September 22, 2015, Respondent acknowledged her duties and responsibilities including her duty to report any change of residency as well as the receipt of food assistance from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent began using her FAP benefits in the state of [REDACTED] on October 8, 2015 and used those benefits exclusively in [REDACTED] through March 30, 2016. The exclusive use of FAP benefits in another state is evidence of a lack of intent to remain a Michigan resident.

Respondent applied for and was approved for food assistance from the state of [REDACTED] from October of 2015, through May of 2016.

On an application for assistance dated June 21, 2016, Respondent acknowledged her duties and responsibilities including her duty to report any change of residency or her receipt of food assistance from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent reported on her June 21, 2016, application that she remained a Michigan resident and failed to report that she was receiving food assistance from another state.

If Respondent had reported that she was a resident of [REDACTED] on October 8, 2015, then the Department would have closed her FAP benefits by the benefit period after November 9, 2015. Respondent was not eligible for FAP benefits in November of 2015, because she was receiving food assistance concurrently in [REDACTED]. Therefore, Respondent was not eligible for any of the FAP benefits she received from November 1, 2015, through May 31, 2016, and she received a \$ [REDACTED] overissuance of FAP benefits.

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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (January 1, 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).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged her duties and responsibilities including her duty to report any change of residency or her receipt of food assistance from another state when she signed an application for assistance dated September 22, 2015. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent failed to report leaving Michigan, which was established by her exclusive use of FAP benefits in [REDACTED] from October 8, 2015, through March 30, 2016.

Respondent acknowledged under penalties of perjury that another application form dated June 21, 2016, was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on her June 21, 2016, application form that she remained a Michigan resident and failed to report her receipt of food assistance from another state.

However, this information was neither true nor complete. Respondent was not living in Michigan after October 8, 2015. Further, Respondent was not eligible for any FAP benefits while receiving food assistance concurrently from [REDACTED] from October of 2015, through May of 2016.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report that she was not living in Michigan and that she was receiving concurrent food assistance from the state

of [REDACTED] for the purposes of maintaining her eligibility for Michigan Food Assistance Program (FAP) benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

The Department has established an Intentional Program Violation (IPV). A ten-year disqualification is appropriate in this case due to the concurrent receipt of food assistance in Michigan and [REDACTED]

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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

KS/nr



Kevin Scully
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]