



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 7, 2018
MAHS Docket No.: 17-012219
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 March 5, 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 August 3, 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 circumstances to the Department and to not trade or sell FAP benefits.
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 September 17, 2015 through November 25, 2015 (fraud period).
7. During the fraud period, the Department alleges that Respondent was not entitled to receive [REDACTED] in FAP benefits.
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 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 is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 11.

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 alleged that Respondent committed an IPV because his FAP benefits were used during his incarceration, suggesting he allowed an unauthorized person to use his card and engaged in the trafficking of benefits. 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 (October 2015 and January 2016), p. 2.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on December 12, 2014. The Department asserts that when completing the application process, Respondent acknowledged that he had received the Information Booklet advising him regarding "Things You Must Do" which explained reporting changed circumstances within 10 days of the change. Additionally, the Department presented a booking card from the Oakland County Sheriff. The document shows that Respondent was incarcerated in Oakland county from September 4, 2015 through January 22, 2016.

The Department alleged that Petitioner did not report his card stolen and that he did not have any other members in his group or individuals authorized to use his card. The Department presented Petitioner's FAP expenditure history, showing transactions during the period of his incarceration.

The Department presented evidence that sufficiently established that Respondent authorized someone outside of the FAP-benefit group to make purchases with his card. However, based on Department policy, a finding of FAP benefit trafficking requires more than allowing someone outside of the FAP benefit group to use FAP benefits. Department policy requires "cash or consideration" in exchange for use of the FAP benefits. BEM 700, p. 2. Department policy does not define "consideration," but it is generally defined as something of value that is bargained for by a party as part of a contract. The requirement of "cash or consideration" requires the Department to establish that Respondent received something of value for use of his FAP benefits; no such allegation was made. Based on the evidence presented, the Department failed to establish by clear and convincing evidence that Respondent committed an IPV of his FAP benefits either by failing to report his incarceration or through trafficking.

The Department also alleged 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.

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.

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; BEM 708 (October 2016), p. 1. Clients are disqualified for ten 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. The overissuance 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. For non-FAP trafficking related IPV cases, the amount of a FAP overissuance 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.

At the hearing, the Department asserted that Respondent trafficked the FAP benefits issued to him by allowing an unauthorized person to use his FAP benefits while he was incarcerated. The Department presented Respondent's IG-311 EBT Transaction history

and identified [REDACTED] in FAP transactions that were alleged to have been trafficked by Respondent. However, as discussed above, the Department failed to present clear and convincing evidence to support its allegation that Respondent committed an IPV by trafficking. Therefore, the Department failed to establish there was an overissuance amount of [REDACTED].

The Department did present an argument that Respondent was not entitled to benefits, and therefore received an overissuance, based on his failure to report his incarceration. 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. Based on Respondent's incarceration status, he was not eligible for benefits issued during the fraud period. However, the overissuance amount presented was based on the Department's allegation that Respondent trafficked his benefits. When determining the overissuance amount based on incarceration status alone, the calculation of the overissuance amount is different from that of trafficking. The overissuance amount would be based on benefits issued, not benefits used. Therefore, the Department failed to establish the overissuance amount based on Respondent's incarceration status. It should be noted that this decision does not preclude the Department from pursuing an overissuance based on client or agency error.

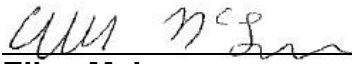
DECISION AND ORDER

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. The Department failed to establish Respondent was overissued FAP benefits in the amount of [REDACTED].

It is FURTHER ORDERED that Respondent should not be disqualified from FAP for a period of 12 months.

EM/cg



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

Via Email:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]