



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 22, 2018
MAHS Docket No.: 17-012962
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on January 22, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). The

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 (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 Food Assistance (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 August 23, 2017 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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. On the Assistance Application made with the State of ██████ signed by Respondent on August 18, 2015, Respondent reported that he was a resident of ██████ and indicated that he was not receiving FAP benefits from another state and reported that he was receiving no income from another state. Exhibit A, pps, 36-38.
5. Respondent was aware of the responsibility to report changes in his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using Michigan FAP benefits outside of the State of Michigan beginning in March 21, 2015 through April 6, 2016. Exhibit A, pps. 25-34
8. The OIG indicates that the time period they are considering the fraud period is October 1, 2015 through April 30, 2016.
9. During the alleged fraud period, Respondent was issued ██████ in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of ██████.
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 Services 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), and Department of Health and Human Services 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:

- 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 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. 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 (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 seeks an intentional program violation due to the Respondent's alleged concurrent receipt of FAP benefits from two states at one time, the State of Michigan beginning January 1, 2015 through April, 30, 2016 and ██████, August 2015. In support of its contention the Department presented an application filed by the Respondent received from the State of ██████ in response to an OIG inquiry requesting information regarding Respondent's receipt of benefits from the state of ██████. Exhibit A, pps. 36-38. In his ██████ application Respondent provided a ██████ address in ██████ and further identified the Respondent name, birth date and social security number and indicated that as of August 2015 the Respondent was active in ██████ for FAP benefits. Exhibit A, p. 35. The letter from ██████ established that Respondent received FAP from ██████ for the period August 1, 2015 through March 12, 2017. The Department also presented evidence that Respondent began using his Michigan FAP benefits in the State of ██████ beginning March 21, 2015 based upon the EBT use history. Exhibit A, p. 25. In addition, the evidence further demonstrated that the Respondent checked to see the balances for both his ██████ EBT card and Michigan EBT Card in ██████ on the same dates Exhibit A, p. 43. Thereafter the Respondent used his Michigan FAP benefits exclusively in ██████ until his case closed in April 2016. .

The Department alleged that Respondent committed an IPV of his FAP because he received FAP benefits from the State of Michigan at the same time he received food assistance benefits from the State of Florida. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 4.

A review of the periods where concurrent benefits were received was presented at the hearing as established by Benefit Summary Inquiry establishing the months of dual receipt and that Respondent was receiving benefits from Michigan. The evidence presented was sufficient to establish concurrent receipt of FAP from ██████ and Michigan and is sufficient to establish an IPV for concurrent receipt.

In order to establish a 10 year IPV disqualification, evidence must be presented to establish the following:

A person is disqualified for a period of 10 years if found guilty through the administrative hearing process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement,) of having made a fraudulent statement

or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

A person may not receive FAP in more than one state for any month. BEM 222 (October 2016), p. 3.

In this case the Respondent made several fraudulent statements in his [REDACTED] application where he indicated a [REDACTED] address and represented that he was a resident of [REDACTED]. When asked whether he received food assistance in another state he answered "No" even though at the time of the [REDACTED] application and ongoing thereafter he was receiving FAP benefits from Michigan. Exhibit A, p. 21. In addition, Respondent reported that he was receiving no income from another state. Exhibit A, pps, 36-38.

In this case based upon the evidence presented, it is determined that the Department has established by clear and convincing evidence that Respondent made false representations regarding his residence in [REDACTED] and denied receiving FAP from another state which was completely false when made in order to receive multiple FAP benefits simultaneously from Michigan and [REDACTED].

Thus the Department has established an Intentional Program Violation by clear and convincing evidence that Respondent misrepresented his residence in [REDACTED] and in order to receive multiple benefits from two states, [REDACTED] and Michigan.

Disqualification

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

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 or FAP. BAM 720, p. 13. 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.

In this case, the Department has established an IPV by clear and convincing evidence with respect to misrepresentation of residence by Respondent in order to receive dual benefits from [REDACTED] and Michigan and thus the Department is entitled to a finding of disqualification for a 10 year period.

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 an overissuance of ██████ during the fraud period October 1, 2015 through April 30, 2016. Exhibit A, p. 5 and pps. 55-57.

Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he was issued food assistance benefits by the State of ██████. BEM 222, p. 3. The evidence showed that Respondent received food assistance benefits during the fraud period (October 1, 2015 through April 30, 2016) from the State of ██████ and during the same period he was also receiving FAP benefits from the State of Michigan. Therefore, Respondent was not eligible for any of the FAP benefits he received from the State of Michigan.

The FAP benefit summary issuance presented by the Department showed that during the fraud period, Respondent received ██████ in FAP benefits from Michigan. Because Respondent was not eligible for concurrent receipt of benefits from two states, he was not eligible for any of the Michigan issued FAP benefits issued during the fraud period. Therefore, it is determined that the Department is entitled to recoup/collect an OI of ██████ from Respondent for overissued FAP benefits during the fraud period.

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:

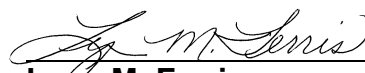
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of ██████.

The Department is ORDERED to initiate recoupment/**collection** procedures for the amount of ██████ in accordance with Department policy.

It is FURTHER ORDERED that

Respondent be personally disqualified from participation in the FAP program for 10 years.

LF/cg



Lynn M. Ferris
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]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]