



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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Date Mailed: March 5, 2018
MAHS Docket No.: 17-013701
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 February 26, 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 September 6, 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 within 10 days.
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 February 1, 2012 through July 31, 2012 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████.
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 alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department when he became incarcerated. Additionally, the Department alleges that Respondent committed an IPV by misrepresenting his circumstances by failing to disclose that he was an absconder and in violation of his probation sentence. 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.

In support of its contention that Respondent committed an IPV for the failure to report a change in circumstances, the Department presented an application Respondent submitted to the Department on November 14, 2011. 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.

The Department also presented an email from an individual in the Absconder Unit with the Michigan Department of Corrections (MDOC). The email states that Respondent was in absconder status from March 8, 2012 through June 24, 2012. Additionally, the Department presented an email from an individual with the Muskegon County Sheriff's Office, which showed Respondent was incarcerated in Muskegon County from June 24, 2012 through July 27, 2012. The Department also presented documentation from Ottawa County Sheriff's Office showing Respondent was incarcerated in Ottawa County from July 27, 2012 through August 8, 2012.

The Department testified that the fraud period was from February 1, 2012 through July 31, 2012. The Department stated that Respondent was also incarcerated from December 8, 2011 from March 5, 2012. However, the Department did not provide any evidence other than a Front-End Eligibility (FEE) investigation summary. The Department did not provide any verifying evidence that Respondent was incarcerated during that period. Thus, the Department failed to establish Respondent was incarcerated during that time period.

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 in absconder status, as well as incarcerated, within 10 days, the Department did not provide any evidence that Respondent's failure to report his incarceration and/or absconder status 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 OI. BAM 700, p. 1. 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. The Respondent was incarcerated from October 23, 2015, until August 16, 2016; and there was no evidence that the location where he was institutionalized fell within one of the qualifying conditions set forth in BEM 212, p. 8. Therefore, Respondent was not eligible to receive benefits during the period of his incarceration. Based on Respondent's FAP group size of one, the Department established that Respondent was not entitled to benefits during his period of incarceration. Additionally, people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2014 and October 2015), p. 1. A person who violates a condition of probation or parole imposed under a federal or state law is disqualified from receipt of FAP benefits and the disqualification continues as long as the violation occurs. BEM 203, pp. 1-2. Thus, Respondent was not eligible for benefits during the period he was in absconder status.

As stated above, the Department failed to provide sufficient evidence that Respondent was incarcerated from December 8, 2011 through March 5, 2012. However, the Department did establish that Respondent was in absconder status from March 8, 2012

through June 24, 2012 and that he was incarcerated from June 24, 2012 through August 8, 2012. Therefore, Respondent was not eligible to receive benefits from March 2012 through July 2012.

The Department presented Respondent's benefit summary which showed he was issued ██████ in FAP benefits for the period of February 1, 2012 through July 31, 2012. As the Department failed to establish Respondent was not entitled to benefits in the month of February 2012, it erred by beginning the overissuance period in February 2012 and it is not entitled to recoup the ██████ in FAP benefits that were issued in February 2012. Accordingly, it is found that the Department has established it is entitled to recoup the ██████ in FAP benefits it issued to Respondent during the overissuance period from March 2012 through July 2012.

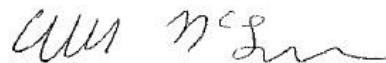
DECISION AND ORDER

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. Respondent **did** receive an OI of program FAP benefits in the amount of ██████.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of ██████, less any previously recouped/collected amounts, in accordance with Department policy.

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]