



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: April 13, 2018
MAHS Docket No.: 17-012208
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 4/11/18, from [REDACTED] Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared and testified.

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 FAP benefits?

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 8/1/17, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG initially requested that Respondent repay program benefits, and, be disqualified for the benefit period of 1/1/17 to 6/30/17. The Department had no

evidence that Respondent had cashed in or utilized the FAP benefits in its proposed evidentiary packet.

3. At the administrative hearing, the Department indicated that evidence subsequent to the filing of the hearing indicates that Respondent did not ineligibly use FAP benefits, and in fact, had FAP benefits expunged from his EBT card due to non-use.
4. Respondent moved out of the state of [REDACTED] in the fall of 2017. Prior to moving, Respondent cut up his EBT card and discarded it.
5. Respondent did not commit an IPV and did not receive any overissuance of FAP benefits during the benefit period of 1/1/17 to 6/30/17.

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 over-issuances 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; ASM 165.

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; BAM 720.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720.

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; 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 had no evidence that Respondent ineligibly received, utilized or cashed in FAP benefits. In fact, prior to the administrative hearing, the Department discovered that Respondent's FAP benefits had been expunged from his card for non-use. Respondent credibly testified that he had cut up his card prior to leaving the State of ██████ when he relocated out of state in the Fall of 2017. The Department does not dispute Respondent's testimony.

Based on the record established in this matter and the applicable law, the Department did not establish that Respondent committed an IPV, or, that Respondent received an overissuance of FAP benefits during the benefit period from 1/1/17 to 6/30/17.

DECISION AND ORDER

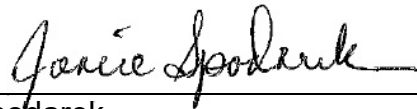
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has **NOT** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did **NOT** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to

Delete the OI and cease any recoupment action.

It is FURTHER ORDERED that Respondent is **NOT** disqualified from the FAP program.



JS/nr

Janice Spodarek
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]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]