



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 11, 2018
MAHS Docket No.: 17-016597
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 April 9, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). The Respondent was represented by himself.

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 November 22, 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. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the fraud period is October 20, 2014 through November 30, 2014.
7. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued FAP benefits from the State of Wisconsin. Exhibit A, p. 47.
9. This was Respondent's **first** alleged IPV.

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 2017), pp. 112-13.

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 2017), p. 7; BAM 720, p. `.

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 October 1, 2014 and the State of Wisconsin. Exhibit A, p. 64 and 47.

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 Wisconsin. 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.

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 support of its contention that the Respondent committed an IPV, the Department presented the Respondent's FAP application filed on October 20, 2014 with the State of Michigan. In that application the Respondent answered the question do you have a Bridge Card? Answering, "No". Exhibit A, p. 13. The Department stated that his answer, answering no was an intentional misrepresentation so that he would not have to disclose that he was receiving FAP from the State of Wisconsin. The Respondent for his part testified that he at no time thought there would be a problem because he contacted State of Wisconsin to tell them he was moving back to Michigan. The question at issue is too broad a question to establish that the Respondent's answer was fraudulent. The information requested by the OIG investigator from the State of Wisconsin demonstrated that the Respondent's case closed in Wisconsin in November 2014, one month after he applied for Michigan benefits and supports the Respondent's testimony that he contacted the Wisconsin Department of Human Services to let them know he was moving to Michigan. Based upon this evidence the Respondent did not at any time misrepresent his identity or his residence in order to receive multiple FAP benefits simultaneously. At the time of his Michigan FAP application there is no evidence to suggest that the Respondent was not a Michigan resident and used his Michigan FAP benefits except for 2 days in Wisconsin which did not violate any Department policy.

Thus, based upon the evidence presented the Department has not established by clear and convincing evidence that Respondent committed an IPV for receipt of concurrent benefits.

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 not established an IPV by clear and convincing evidence with respect to misrepresentation made by Respondent to effectuate receipt of FAP benefits from two States in one month made by Respondent in order to receive dual benefits from Wisconsin and Michigan and thus the Department is not entitled to a finding of disqualification from receipt of Food Assistance.

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 [REDACTED] during the period of Overissuance, October 20, 2014 through November 30, 2014. Exhibit A, p. 3.

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 Wisconsin. BEM 222, p. 3. The evidence showed that Respondent received food assistance benefits during the period from the State of Wisconsin 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 \$269.00 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 2-month period. Therefore, it is determined that the Department is entitled to recoup/collect an OI of [REDACTED] from Respondent for overissued FAP benefits during the fraud period.

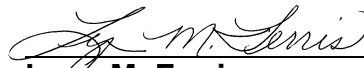
DECISION AND ORDER

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of [REDACTED]

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

LF/tm



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

DHHS

[REDACTED]
[REDACTED]
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