



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 31, 2018
MAHS Docket No.: 17-016652
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 May 9, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Respondent.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving FAP benefits for ten years?

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 30, 2017, to establish that Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.

4. Respondent was aware of the responsibility to report changes in residency to the Department.
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 May 1, 2014 through October 31, 2014 (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. Respondent signed a Repay Agreement, agreeing to repay the Department for the overissuance of 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 Services 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 or more, or
- the total amount is less than \$500, 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), pp.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 (January 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. 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 alleges that Respondent committed an IPV of her FAP benefits because he received Michigan-issued FAP benefits at the same time she was issued FAP benefits in Pennsylvania. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. In support of its contention that Respondent committed an IPV, the Department presented

an application submitted by Respondent on May 6, 2014 in which she acknowledged that he received the Information Booklet advising of "Things You Must Do" (which explained reporting change circumstances, including residency).

The Department presented correspondence from the State of Pennsylvania which revealed that Respondent received FAP benefits in Pennsylvania from January 2014 through January 2015. The Department further presented a benefit issuance summary relating to Respondent's Michigan issued FAP benefits which indicated that Respondent received Michigan issued FAP benefits from May 6, 2014 through October 31, 2014. In the May 6, 2014 application, Respondent stated that she was not receiving benefits from another state. Further, once Respondent began receiving Michigan benefits, she received benefits from both states for five months.

Respondent initially testified that she stopped receiving FAP benefits in Pennsylvania in April 2014. However, Respondent provided no evidence to support this assertion. Respondent also testified that she only remained in Michigan until June 2014. Respondent indicated that when she returned to Pennsylvania, she re-applied for FAP benefits. Again, the correspondence from the State of Pennsylvania did not reveal any interruption in benefits. Respondent acknowledged that she continued to receive and use her Michigan FAP benefits after she relocated back to Pennsylvania. Respondent was unable to provide an explanation as to why she used the Michigan FAP benefits if she knew that she was not entitled to FAP benefits in both states.

If a client only received FAP benefits from multiple states for only one or two months, perhaps doubt can be raised concerning whether a client intended to receive duplicate benefits. For clients receiving FAP benefits from multiple states for a period of five months, there is less uncertainty that the client intended to receive the duplicate benefits. Given that Respondent stated that she was not receiving FAP benefits from another state in the May 6, 2014 application and used her Michigan FAP benefits out of state for several months, it is found that the Department has established that Respondent intentionally misled the Department for the purpose of maintaining FAP program benefits.

Disqualification

The Department contended a ten-year disqualification was justified. The contention was based solely on Respondent's receipt of FAP benefits from multiple states. A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720 (October 2015), p. 15. 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.

For a ten-year disqualification, the Department must establish that Respondent purposely misrepresented residency (or identity). It appears that at the time Respondent submitted the Michigan application, she had relocated to Michigan. As such, there is no

evidence that Respondent misrepresented her residency or identity and therefore is not subject to a 10-year disqualification.

However, it is clear that Respondent did provide false information to the Department as to whether she was receiving FAP benefits in another state. When an individual provides false or misleading information to the Department for the purposes of establishing benefits, she is subject to a one-year disqualification of FAP benefits if this is the first occurrence. Therefore, it is found the Department has established that Respondent is subject to a 12-month disqualification of FAP benefits.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department testified that Respondent had previously executed a Repay Agreement, agreeing to repay the Department in the amount of [REDACTED]. Therefore, no overissuance will be order in this decision.

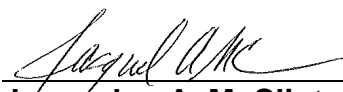
DECISION AND ORDER

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:

The Department has established by clear and convincing evidence that Respondent committed an IPV.

It is FURTHER ORDERED that Respondent is subject to a 12-month disqualification from FAP benefits.

JM/cg



Jacquelyn A. McClinton
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]