



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 8, 2018
MAHS Docket No.: 17-016635
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulations, particularly 7 CFR 273.16. After due notice, a telephone hearing was held on June 7, 2018, from Lansing, Michigan. The Department was represented by Thomas Lilienthal of the Office of Inspector General (OIG). The Respondent did not appear. The hearing was conducted in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

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. On July 28, 2015, Respondent applied for assistance from the Department, including FAP benefits.
2. The application Respondent completed on July 28, 2015, instructed Respondent to report changes in his circumstances which could affect his eligibility for benefits to the Department within 10 days of the date of the change.

3. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.
4. The Department issued FAP benefits to Respondent from August 2016 through June 2017.
5. The Department received an alert that Respondent was receiving FAP benefits from Michigan and [REDACTED] concurrently starting in December 2016.
6. Respondent had not reported to the Department that he was receiving FAP benefits from [REDACTED]
7. The Department conducted an investigation and verified that [REDACTED] issued FAP benefits to Respondent from December 2016 through June 2017.
8. The Department determined that Respondent was overissued benefits by the Department because he was not eligible for Michigan issued FAP benefits while receiving FAP benefits from another state.
9. The Department issued Respondent \$ [REDACTED] in FAP benefits from December 2016 through June 2017 when Respondent was not eligible to receive any FAP benefits from the Department because he was receiving FAP benefits from [REDACTED]
10. On November 30, 2017, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
11. The OIG requested Respondent be disqualified from receiving program benefits for 10 years for an IPV involving the concurrent receipt of benefits.
12. A notice of hearing was mailed to Respondent at his 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), 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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 1, 2016), p. 1. In this case, Respondent received more benefits than he was entitled to receive because Respondent received FAP benefits from the Department and [REDACTED] concurrently. Pursuant to 7 CFR 273.3(a), an individual cannot receive benefits from more than one state concurrently. Thus, Respondent was not eligible for any benefits from the Department while he was receiving benefits from [REDACTED]. Respondent received \$ [REDACTED] in FAP benefits from the Department from December 2016 through June 2017 while Respondent was also receiving benefits from [REDACTED]. Therefore, Respondent was overissued \$ [REDACTED] in FAP benefits.

Intentional Program Violation

An IPV involving the concurrent receipt of benefits exists when the client made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 1, 2015), 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 (January 1, 2016), p. 1; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Only a Michigan resident is eligible for Michigan issued FAP benefits. BEM 220 (January 1, 2016), p. 1. Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (October 1, 2016), p. 11. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent claimed and received benefits from the State of [REDACTED] from December 2016 through June 2017 while he was receiving FAP benefits from the Department. Respondent failed to report either that he had changed his address or that he was receiving benefits from [REDACTED]. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report his change to the Department and that reporting the change to the Department would have caused the Department to stop issuing his FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

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. 16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits. BAM 720, p. 16. 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, Respondent committed an IPV involving the concurrent receipt of benefits because Respondent claimed and received FAP benefits from the Department and the State of ██████ concurrently. Therefore, Respondent is subject to a ten-year disqualification for an IPV involving the concurrent receipt of benefits.

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. Respondent received an overissuance of FAP benefits in the amount of \$ ██████ that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ ██████ in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of 10 years.

JK/nr



Jeffrey Kemm
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) 763-0155; 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

Kimberly Kilmer
800 Watertower
Big Rapids, MI
49307

Osceola County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

