



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 18, 2018
MAHS Docket No.: 17-017014
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 14, 2018, from Lansing, Michigan. The Department was represented by Allyson Carneal, Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared and represented himself.

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 May 12, 2015, the Department issued a Redetermination to Respondent to obtain information from Respondent to review his eligibility for FAP benefits.
2. On June 2, 2015, Respondent returned the completed Redetermination to the Department. Respondent reported that he did not have any changes to report. Respondent affirmed that his address was still [REDACTED], [REDACTED]

3. On July 13, 2015, the Department issued a Notice of Case Action to Respondent. The Notice of Case Action instructed Respondent to report changes to the Department which could affect his eligibility for assistance, including changes in his address.
4. Respondent did not have any apparent physical or mental impairment which would limit his understanding or ability to fulfill his reporting requirement.
5. The Department issued FAP benefits to Respondent based on the information he provided.
6. Respondent applied for food assistance from the State of Indiana, and it issued benefits to Respondent for October 2015 through January 2016.
7. The Department also issued FAP benefits to Respondent for October 2015 through January 2016.
8. Respondent used the FAP benefits issued by the Department exclusively in Indiana from November 25, 2015, until October 10, 2017.
9. Respondent was in Indiana taking care of a family member with health problems.
10. Respondent did not report to the Department that he was living in Indiana or that he was receiving food assistance from Indiana.
11. The Department issued Respondent FAP benefits in the amount of \$ [REDACTED] from October 1, 2015, through September 30, 2017.
12. The Department conducted an investigation of Respondent's case and verified that Indiana issued FAP benefits to Respondent from October 2015 through January 2016.
13. The Department determined that it overissued \$ [REDACTED] in FAP benefits to Respondent from October 1, 2015, through September 30, 2017, because Respondent was ineligible for benefits during the time he was living in Indiana.
14. On December 28, 2017, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
15. The OIG requested Respondent be disqualified from receiving program benefits for 10 years for an IPV involving the concurrent receipt of benefits.

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, 2015), p. 1. In this case, Respondent received more benefits than he was entitled to receive. Respondent received FAP benefits from the Department and Indiana 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 Indiana.

Further, only a resident of Michigan is eligible for FAP benefits issued by the Department. BEM 220 (July 1, 2014), p. 1. Respondent was not a Michigan resident from October 2015 through September 2017 because he was living in Indiana to take care of a family member. Thus, Respondent was not entitled to the FAP benefits the Department issued him from October 2015 through September 2017. Therefore, the \$ [REDACTED] in FAP benefits issued to Respondent from October 2015 through September 2017 was an overissuance.

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 (October 1, 2015), 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, 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. 10-11. 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 Indiana from October 2015 through January 2016 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 Indiana. 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 Indiana concurrently. Therefore, Respondent is subject to a ten-year disqualification for an IPV involving the concurrent receipt of benefits.

DECISION AND ORDER

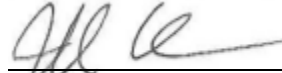
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$ [REDACTED] 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 \$ [REDACTED] 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

Carisa Drake
190 East Michigan
Battle Creek, MI
49016

Calhoun County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
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Respondent

