



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 2, 2018
MAHS Docket No.: 18-000493
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on June 28, 2018, from Lansing, Michigan. The Department was represented by Philip Giuliani, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] did not appear. The hearing was held 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 May 31, 2017, Respondent applied for assistance from the Department, including FAP benefits.
2. The Department approved Respondent's application for FAP benefits and issued him FAP benefits thereafter.

3. On November 9, 2017, Respondent was booked in the Wayne County Jail. Respondent's bond was set at \$20,000. Respondent had not posted bond and remained incarcerated as of January 4, 2018.
4. The Department continued to issue FAP benefits to Respondent while he was incarcerated. The Department issued Respondent \$192.00 on December 3, 2017, and another \$192.00 on January 3, 2018.
5. Respondent's FAP benefits were used by someone other than Respondent to make purchases totaling \$409.71 while Respondent was incarcerated.
6. The Department conducted an investigation of Respondent's case and discovered that it issued benefits to him while he was incarcerated and that someone used his benefits while he was incarcerated.
7. On January 10, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance benefits and committed an IPV by trafficking FAP benefits.
8. The Department's OIG requested the establishment of an overissuance of \$409.00 for FAP benefits trafficked from November 10, 2017, through January 9, 2018.
9. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
10. A notice of hearing was mailed to Respondent at his last known address and was not returned by the United States Postal Service 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.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 1, 2017), p. 1.

Trafficking is:

- The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.
- Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food. buying or selling of FAP benefits for cash or consideration other than eligible food.

BAM 700 (October 1, 2016), p. 2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p. 1; see also 7 CFR 273(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, the Department alleged that Respondent committed an IPV by trafficking his FAP benefits. I find that the Department has not met its burden to establish by clear and convincing evidence that Respondent engaged in the trafficking of FAP benefits. To “traffic” means to deal or trade, and the Department did not establish that Respondent engaged in such conduct. Although Respondent’s FAP benefits were used by someone other than Respondent while he was incarcerated, the Department did not present any evidence to establish that Respondent bargained to receive anything in exchange for his FAP benefits.

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, and, for all other IPV cases involving FAP, 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. 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, the Department did not establish that Respondent committed an IPV. Thus, Respondent is not subject to a disqualification.

Overissuance

An overissuance is the amount of benefits issued to a client in excess of what the client was eligible to receive. BAM 700, p.1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, Respondent received more FAP benefits than he was entitled to receive (although for reasons other than those alleged by the Department).

An individual who is incarcerated for more than 30 days is ineligible for benefits. BAM 804 (July 1, 2014), p.1. Respondent was incarcerated from November 9, 2017, through at least January 4, 2018, so Respondent was ineligible for benefits as of December 10, 2017, when he had been incarcerated for more than 30 days. Thus, Respondent was not entitled to the benefits he received on January 3, 2018. Therefore, the amount of the overissuance is the amount of benefits Respondent received on January 3, 2018, \$192.00.

DECISION AND ORDER

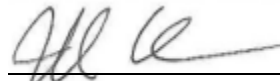
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$192.00 that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$192.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from receiving FAP benefits.

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

Jeanette Cowens
2524 Clark Street
Detroit, MI
48209

Wayne 41 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

