



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] CA [REDACTED]

Date Mailed: July 27, 2018
MAHS Docket No.: 18-001801
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 Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on July 25, 2018, from Lansing, Michigan. The Department was represented by Valerie Lancour, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] 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 December 27, 2016, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, p. 12.
2. On December 27, 2016, the Department issued a Notice of Case Action to Respondent. The Notice advised Respondent that she was approved for FAP benefits and instructed Respondent to report all changes which could affect her

eligibility for benefits to the Department within 10 days of the date of the change. Exhibit A, p. 32-35.

3. The December 27, 2016, Notice included a blank change report so that Respondent could report changes to the Department. Exhibit A, p. 37-38.
4. Respondent did not have any physical or mental impairment which would have limited her understanding or her ability to fulfill her reporting requirement.
5. On March 11, 2017, Respondent began using her FAP benefits exclusively in the state of Tennessee. Respondent continued to use her FAP benefits exclusively in the state of Tennessee through July 15, 2017. Exhibit A, p. 39-50.
6. On April 6, 2017, Respondent gained employment at MAPCO in Tennessee. Respondent represented to MAPCO that her residence was in Tennessee. Respondent received her first paycheck from MAPCO on April 14, 2017. Exhibit A, p. 60-61.
7. Respondent did not report to the Department that she had moved to Tennessee or that she had gained employment. The Department continued to issue FAP benefits to Respondent as if she was a Michigan resident and as if she was not earning employment income.
8. On July 19, 2017, Respondent began using her FAP benefits exclusively in the state of California. Respondent continued to use her FAP benefits exclusively in the state of California through September 25, 2017. Exhibit A, p. 39-59.
9. On August 22, 2017, Respondent applied for assistance from the state of California, including food assistance benefits. California issued food assistance benefits to Respondent from August 2017 through October 2017. Exhibit A, p. 64-66.
10. The Department issued FAP benefits to Respondent during the same months that California issued her food assistance benefits. Exhibit A, p. 67.
11. Respondent did not report to the Department that she had moved to California or that she was receiving food assistance benefits from California.
12. On February 27, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, p. 1.
13. The OIG requested recoupment of a \$968.00 overissuance of FAP benefits issued from June 2017 through October 2017, and the OIG requested that Respondent be disqualified from receiving program benefits for 10 years for an IPV involving the concurrent receipt of benefits.

14. A notice of hearing was mailed to Respondent at his last known address and it 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), 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.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 1, 2016), 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 benefits than she was entitled to receive. Only a resident of Michigan is eligible for FAP benefits issued by the Department. BEM 220 (January 1, 2016), p. 1. Respondent was not a Michigan resident beginning with the date she gained employment in Tennessee on April 6, 2017. Respondent should have reported her move to the Department within 10 days of the date she moved, but she failed to do so. As a result, the Department continued to issue Respondent FAP benefits beyond the date it would have if she would have reported as required. Thus, Respondent was not entitled to the FAP benefits the Department issued her from June 2017 through October 2017. Therefore, the \$968.00 in FAP benefits issued to Respondent from June 2017 through October 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 her 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, p. 1. Respondent was required to report changes in her 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 California from August 2017 through October 2017 while she was receiving FAP benefits from the Department. Respondent failed to report either that she had changed her address or that she was receiving benefits from California. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation regarding her identity or residence in order to receive multiple food assistance benefits simultaneously since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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 California 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 \$968.00 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 \$968.00 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

Barbara Schram - 4
711 West Chisholm St.
Alpena, MI
49707

Alpena County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
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Respondent

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