



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: August 1, 2018
MAHS Docket No.: 17-016904
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. The hearing was adjourned on May 29, 2018, after a notice of hearing mailed on May 9, 2018, was returned by the US Postal Service on May 21, 2018. After due notice, a telephone hearing was held on July 3, 2018, from Lansing, Michigan. The Department was represented by Debra Echtenaw, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (FAP)?

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 an application for Food Assistance Program (FAP) benefits as a group of five dated [REDACTED], 2015, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from

another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-37.

2. On an application for Food Assistance Program (FAP) benefits as a group of five dated [REDACTED], 2015, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 38-53.
3. The Respondent received Food Assistance Program (FAP) benefits totaling \$1,363 from October 1, 2015, through December 31, 2015. Exhibit A, pp 85-86.
4. Respondent began using her Food Assistance Program (FAP) benefits in Arizona on August 20, 2015, and used them exclusively in Arizona through December 8, 2015. Exhibit A, pp 57-58.
5. Respondent filed an application for food assistance with the state of Arizona on August 26, 2015, and reported an Arizona address as her residence. Exhibit A, pp 60-77.
6. Respondent received food assistance benefits from the state of Arizona from August of 2015, through July of 2016. Exhibit A, pp 78-83.
7. On December 20, 2017, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,363 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
8. The Department's OIG filed a hearing request on December 20, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
9. On June 1, 2018, a notice of hearing was mailed to Respondent at the last known address. The Department's representative testified that Respondent is an active recipient of benefits at that address. The June 1, 2018, notice of hearing 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (January 1, 2016),
pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2016), p 3.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the Food Assistance Program (FAP) while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2016), p 1.

A person cannot receive FAP in more than one state for any month. BEM 220.

On applications for assistance dated [REDACTED], 2015, and [REDACTED], 2015, Respondent acknowledged her duties and responsibilities including her duty to report any change of residency as well as the receipt of food assistance benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent received FAP benefits totaling \$1,363 from October 1, 2015, through December 31, 2015.

Respondent started using her FAP benefits in Arizona on August 20, 2015, and used them exclusively in Arizona through December 8, 2015. The exclusive use of FAP benefits outside Michigan is evidence of a lack of intent to remain a Michigan resident. If Respondent had reported moving to Arizona on August 20, 2015, the Department would have closed her FAP benefits by the first benefit period after September 21, 2018. Further, Respondent applied for food assistance benefits from the state of Arizona on August 26, 2015, and received Arizona food assistance from August 1, 2015, through July 31, 2016. Respondent was not eligible for Michigan FAP benefits in the same months that she received concurrent food assistance from another state.

Therefore, Respondent was not eligible for any of the FAP benefits she received from October 1, 2015, through December 31, 2015, and she received a \$1,363 overissuance of FAP benefits.

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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, 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).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged her duties and responsibilities including her duty to report any change of residency as well as the receipt of food assistance from another state when she signed applications for assistance dated [REDACTED], 2015, and [REDACTED], 2015. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent failed to report moving to Arizona, which was established by her exclusive use of Michigan FAP benefits in Arizona. Further, Respondent applied for food assistance in Arizona and received food assistance concurrently with her Michigan FAP benefits. As a result of Respondent's failure to report her circumstances, she received an overissuance of FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report moving to Arizona and applying for food assistance in Arizona for the purposes of maintaining her eligibility for FAP benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disqualified for periods of

one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

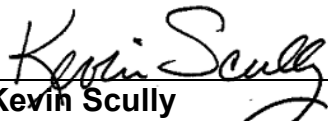
The Department has established an Intentional Program Violation (IPV). A ten-year disqualification is appropriate in this case due to the concurrent receipt of food assistance in Michigan and Arizona.

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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$1,363.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,363 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be personally disqualified from participation in the Food Assistance Program for 10 years.

KS/hb



Kevin Scully
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 Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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