RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: July 3, 2018
MAHS Docket No.: 18-000745
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on June 6, 2018, from Lansing, Michigan.

The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Mr. Beck testified on behalf of the Department. The Department submitted 63 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

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 for 12 months?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on January 29, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.

3. On [redacted], 2016, Respondent submitted a FAP application. [Dept. Exh. 11-20].

4. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 21].

5. Respondent was aware of the responsibility to report to the Department that he was not to allow someone else to use his card. [Dept. Exh. 20].

6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 14-15].

7. On February 19, 2017, Respondent's EBT card was used for a transaction of $1,004.78 at the Roseville Sam's Club, with a Sam's Club membership card belonging to [redacted], with an address of [redacted] MI. [Dept. Exh. 4, 28].

8. The photographs obtained of the transaction at Sam's Club in Roseville, show a black female making the purchase, accompanied by a black male who assists in pushing the shopping carts out of the store. [Dept. Exh. 4, 34-35].

9. A review of Respondent's photograph from the Secretary of State shows Respondent is a white male. [Dept. Exh. 4, 36].

10. A review of Respondent's EBT history shows his last transaction was on April 16, 2017, and he did not report the card stolen and did not have an authorized representative. [Dept. Exh. 4, 26].

11. The Department's OIG indicates that the time period it is considering the fraud period is February 19, 2017, (fraud period). [Dept. Exh. 4].

12. During the fraud period, Respondent was issued $3,120.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent allowed unauthorized persons to use $1,004.78 of those benefits. [Dept. Exh. 4, 22].

13. This was Respondent's first alleged IPV.

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.

Effective October 1, 2017, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is $500 or more, or
  - the total 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. BAM 720, pp 12-13 (10/1/2017).

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 his or her reporting responsibilities, **and**

- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. 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). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, Respondent gave his FAP card to persons unknown who used his EBT card at Sam's Club in Roseville on February 19, 2017. A black female accompanied by a black mail are pictured using Respondent's EBT card and also knew Respondent's PIN. Respondent is a white male.

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 2. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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, this was Respondent's first instance of an Intentional Program Violation; therefore, a 12-month disqualification is required.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

In this case, Respondent received $1,004.78 in FAP benefits that he was not entitled to; therefore, the Department is permitted to recoup that amount.

DECISION AND ORDER

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

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did receive an OI of FAP benefits in the amount of $1,004.78.

The Department is ORDERED to initiate recoupment procedures for the amount of $1,004.78 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program for a period of 12 months.

VLA/hb

Vicki Armstrong
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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Tolisha Bates
21885 Dunham Road
Clinton Twp., MI 48036

Macomb County (District 12), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

[redacted]