



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], NE [REDACTED]

Date Mailed: September 5, 2018
MAHS Docket No.: 18-002764
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. After due notice, a telephone hearing was held on August 7, 2018, from Lansing, Michigan. The Department was represented by Tiffany Flagg, 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 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 January 4, 2013, Respondent acknowledged his duties and responsibilities including the duty to report any change of residency to the Department in a timely manner. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-40.

2. On July 1, 2013, Respondent began using his Food Assistance Program (FAP) benefits in Nebraska, and used them exclusively in Nebraska through April 25, 2014. Exhibit A, pp 98-99.
3. Respondent failed to report starting employment on September 11, 2013, and receiving earned income from September 20, 2013, through April 25, 2014, while reporting a Nebraska residence to his employer. Exhibit A, pp 112-114.
4. Respondent exclusively used his Food Assistance Program (FAP) benefits in Nebraska from January 17, 2015, through September 25, 2016. Exhibit A, pp 100-105.
5. On January 7, 2015, Respondent acknowledged his duties and responsibilities including the duty to report any change of residency to the Department in a timely manner. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 41-68.
6. Respondent reported on his January 7, 2015, application for assistance that he lived in Michigan. Exhibit A, p 43.
7. Respondent failed to report starting employment on September 14, 2015, and receiving earned income from September 25, 2015, through February 24, 2017, while reporting a Nebraska residence to his employer. Exhibit A, pp 115-116.
8. Respondent received Food Assistance Program (FAP) benefits totaling \$756 from November 1, 2013, through February 28, 2014. Exhibit A, pp 117-120.
9. Respondent received Food Assistance Program (FAP) benefits totaling \$2,546 from January 1, 2015, through February 29, 2016. Exhibit A, pp 117-120.
10. On March 21, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$3,302 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
11. The Department's OIG filed a hearing request on March 21, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
12. This was Respondent's first established IPV.
13. A notice of hearing was mailed to Respondent at the 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), 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.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the 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 (April 1, 2018), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term "interoperability" means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

On an application for assistance dated [REDACTED], 2013, Respondent acknowledged his duties and responsibilities as a FAP recipient. While an ongoing FAP recipient, Respondent apparently left Michigan and exclusively use his FAP benefits in Nebraska from July 1, 2013, through April 25, 2014. The evidence does not support a finding that Respondent made any false or misleading statement, misrepresented, concealed or withheld facts from his [REDACTED], 2013, application form causing him to receive FAP benefits from November 1, 2013, through February 28, 2014, that he was not eligible for. Respondent had no duty to report leaving Michigan, and using his FAP benefits in Nebraska was not a violation of FAP regulations. Although Respondent clearly travelled to the state of Nebraska and obtained employment there, no evidence was presented on the record that Respondent did not intend to return to Michigan after a temporary visit. Therefore, there was no overissuance of FAP benefits from November 1, 2013, through February 28, 2014, based on residency.

On an application for assistance dated [REDACTED], 2015, Respondent acknowledged his duties and responsibilities as a FAP recipient. While an ongoing FAP recipient, Respondent apparently left Michigan and exclusively used his FAP benefits in Nebraska from January 17, 2015, through September 25, 2016. The evidence does not support a finding that Respondent made false or misleading statements, or misrepresented, concealed or withheld facts on his [REDACTED], 2015, application for assistance. Respondent had no duty to report leaving Michigan on or around January 17, 2015, and his use of FAP benefits in Nebraska was not a violation of FAP regulations. Although Respondent clearly travelled to the state of Nebraska and obtained employment there, no evidence was presented on the record that Respondent did not intend to return to Michigan after a temporary visit. Therefore, there was no overissuance of FAP benefits from January 1, 2015, through February 29, 2016, based on residency.

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 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 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that 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 his duties and responsibilities on January 4, 2013, but had no duty to report his use of FAP benefits outside Michigan from July 1, 2013, through April 25, 2015. The hearing record does not constitute clear and convincing evidence of intentionally making false or misleading statements, misrepresenting, concealing, or withholding facts on his [REDACTED], 2013, application for assistance, or at any other time before his FAP benefits closed on or around February 28, 2014.

Respondent again acknowledged his duties and responsibilities on January 7, 2015, but had no duty to report his use of FAP benefits outside Michigan from January 17, 2015, through September 25, 2016. The hearing record does not constitute clear and convincing evidence of intentionally making false or misleading statements, misrepresenting, concealing, or withholding facts on his January 4, 2013, application for assistance.

Respondent was potentially ineligible for FAP benefits based on unreported income.

However, the periods of alleged overissuance in this case were not based on Respondent's periods of employment in Nebraska, and the amount of overissuance of based on his alleged ineligibility due to residency and not unreported income. The hearing record does not support a finding that Respondent was totally ineligible for FAP

benefits based on his income since no evidence that such eligibility determinations were made in this case.

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that Respondent intentionally failed to report that he was not living in Michigan for the purposes of becoming maintaining eligibility for FAP benefits that he would not have been eligible for otherwise.


The Department has not established an Intentional Program Violation (IPV).

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. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department is ORDERED to delete the OI and cease any recoupment action.

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

Clarence Collins
12140 Joseph Campau
Hamtramck, MI 48212

Wayne County (District 55), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED] NE [REDACTED]