



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 14, 2018
MAHS Docket No.: 18-002766
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, 42 CFR 431.230(b), 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 18, 2018, from Detroit, Michigan. The Department was represented by Allyson Carneal, 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 receiving benefits for 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. The Department's OIG filed a hearing request on March 20, 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. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to not traffic FAP benefits and to report changes in circumstances.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is June 27, 2017, through October 13, 2017, (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
9. This was Respondent's **first** alleged IPV.
10. 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), 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, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (January 2017), pp. 12-13.

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 700 (October 2017), pp. 6-7; 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). 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 the Department seeks and IPV due to the Respondent continuing to have her FAP benefits used while she was incarcerated and, therefore, unable to use her benefits. In addition, an incarcerated person is not eligible to receive FAP benefits while incarcerated and is required to report changes to the Department that affect benefit eligibility. BAM 804 (May 2012), p. 1. An Authorized Representative who has access to a group's FAP benefits must be designated in writing by the client, via an Assistance Application, and/or a Request for Food Stamp Authorized Representative form. BAM 110 (January 2013), p. 10.

In support of its case, the Department presented a ██████ County Sheriff's Office Inmate Log for Respondent demonstrating a booking date of ██████ 2018, and a release date of ██████ 2017, to establish Respondent's incarceration. (Exhibit A, pp. 20-23.) The Department also presented a redetermination completed by Respondent on August 22, 2017, while incarcerated which indicated that she was homeless and without income but did not report her incarceration, in the Change of Address section of the redetermination. The signature on the redetermination is distinctive and matches prior signatures on other forms submitted by Respondent. (Exhibit A, p. 38.) In addition, so as to avoid discovery, the Respondent indicated that she had no telephone number. In addition, the redetermination was mailed to an address of another Department client ██████. In addition, the Department presented jail records that indicated that five days after the redetermination was mailed to Respondent at ██████ address, he visited the Respondent in the jail, one of seven visits ██████ made to the Respondent while she was incarcerated. The Department received the redetermination on September 1, 2017, two days after Respondent was visited by ██████ and the card was reported stolen by Respondent on September 7, 2017; and a new card was issued on September 7, 2017, and was mailed to ██████ address. The card was used consistently from September 15, 2017, onward until February 2018 when it was reported stolen or lost based upon the IG-311; and the Benefit Issuance Summary demonstrating issuance of FAP of \$ ██████ a month for the months of June 2017 through September 30, 2017 to Respondent. (Exhibit A, pp. 23-26 and 39.) The Respondent was released from jail on ██████, 2017, at which time the card continued to be used upon her release through February 2018. Finally, it was also determined that Respondent was the only authorized user on the card.

The Department's evidence clearly demonstrated that someone was clearly using Respondent's benefits while she was incarcerated despite the fact that Respondent was the only authorized user and FAP group member. Because Respondent was incarcerated, she could not use the benefits. In addition, because Respondent was the only authorized user with a PIN, and a new card was issued during incarceration,

Respondent must have shared the PIN with someone to allow the other person's use of her benefits while incarcerated. These acts constitute a transfer of FAP benefits in violation of federal regulations. 7 CFR 273.16 (c)(2). Given the proofs presented and based upon the totality of the circumstance, the Department has met its burden of proof in establishing the Respondent committed an IPV.

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 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. 17. 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 has established by clear and convincing evidence that Respondent has committed an IPV and thus, is entitled to a finding of disqualification of Respondent from receipt of FAP benefits. Because this is Respondent's first IPV, a disqualification of 12 months due to IPV of FAP being established is imposed.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6. The OI amount for a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8.

Department policy prohibits a person who is incarcerated from receiving FAP benefits; the person is ineligible while incarcerated. BAM 804, p.1. Furthermore, a person is considered to be a resident of an institution when the institution provides the majority of his/her meals as part of its normal services. BEM 212 (October 2015), p. 8. Jail, prison, juvenile detention and secure short-term detention are included in the definition of an institution. BEM 265 (July 2015), p. 1. Residents of institutions are not eligible for FAP benefits unless one of the following is true: the facility is authorized by the Food and Consumer Service to accept FAP benefits; the facility is an eligible group living facility; or the facility is a medical hospital and there is a plan for the person's return home. BEM 212, p. 8.

Respondent was incarcerated from June 27, 2017, through October 13, 2017; there was no evidence that the location where she was institutionalized fell within any of the qualifying conditions set forth in policy which would permit use or receipt of FAP benefits. BEM 212, p. 8. The Department presented a FAP purchase history showing that Respondent's benefits were used during the alleged fraud period for transactions

totaling \$ [REDACTED]. The Department also presented a Benefit Summary Inquiry showing that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period. According to the redetermination and testimony, Respondent was the only member of her FAP group and was incarcerated during the fraud period; therefore, she was not eligible for any of the benefits issued to her during the period of incarceration.

The Department did not argue that the Respondent was trafficking benefits; therefore, the Department improperly requested the value of the transactions completed during the fraud period as the OI amount. The OI amount should be based upon the value of benefits issued since Respondent was not eligible for any benefits while incarcerated. BAM 720, p. 8. When the calculation of an OI is based upon a change in circumstances, the Department must allow time for the reporting and processing of the changes in order to begin the OI. To determine the first month of the overissuance period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715, pp. 4-5. Applying the above periods, the OI begin date should be August 2017, and the OI amount is \$ [REDACTED] for the months of August 2017, September 2017 and October 2017, which the Department is entitled to recoup/collect.

DECISION AND ORDER

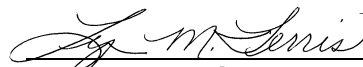
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) Food Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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

LMF/jaf



Lynn M. Ferris

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

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
L M Ferris
MAHS