



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 2, 2018
MAHS Docket No.: 18-003509
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on July 26, 2018, from Lansing, Michigan. The Department was represented by Trevor Manuel, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4). During the hearing, 47 pages of documents were offered and admitted into evidence as Department's Exhibit A, pages 1-47.

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 ██████████, 2016, Respondent filed with the Department an application for benefits, including FAP benefits. Exhibit A, pages 11-39.

2. As part of the application process, Respondent certified that he had received, reviewed and agreed with the information in the assistance application Information Booklet, including the Things You Must Do and Important Things to Know publications. Exhibit A, pages 21-22.
3. The Things You Must Do pamphlet informed Respondent that he must tell the Department about any change that could impact eligibility for benefits within 10 days of the change. Exhibit A, page 22.
4. The Important Things to Know pamphlet informed Respondent that trading or selling FAP benefits was considered FAP trafficking and that such action violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, page 28-30.
5. Respondent did not have any mental or physical impairment that would limit her understanding or ability to fulfill his responsibilities regarding his FAP benefits.
6. From February 9, 2017, through March 16, 2017, Respondent's EBT card was used to make \$548.78 of purchases. Exhibit A, page 42.
7. The Department's OIG filed a hearing request on March 29, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
8. The OIG requested that Respondent be disqualified from receiving FAP benefits.
9. The OIG considered all purchases, totaling \$548.78, made by Respondent from February 9, 2017, through March 16, 2017, fraudulent and is seeking repayment of the full \$548.78 alleged overissuance.
10. The OIG based its decision on its belief that Respondent was incarcerated from February 5, 2017, through March 29, 2017.
11. The competent evidence on the record does not support a finding that Respondent was incarcerated at any relevant time. Exhibit A, page 40.
12. This was Respondent's first alleged IPV.
13. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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), 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.

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, p.6; 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 alleges that Respondent committed an IPV by collecting FAP benefits while incarcerated in a location that provides meals and trafficking his benefits during the same time period. The Department has shown that \$548.48 of purchases were made using Respondent's EBT card from February 9, 2017, through March 29, 2017, at various locations in Kalamazoo. Further, the Department has shown that Respondent never informed the Department that he was incarcerated, which he would be required to do within ten days as it is a factor that would impact Respondent's eligibility for FAP benefits.

Thus, if the Department substantiated its allegation that Respondent was, in fact, incarcerated during that time period, this would certainly be an IPV. Necessarily, Respondent would have had to traffic his benefits as he was the only one authorized to use his card, he was incarcerated, and the card was used in locations other than where

he was incarcerated. Further, Respondent's failure to update his information with the Department probably would qualify as an IPV as well.

In support of its allegation, the Department offered testimony from Mr. Manuel and e-mails between Mr. Manuel and one [REDACTED]. In response to a query regarding Respondent's dates of incarceration, [REDACTED] stated in a January 9, 2018, email: "Happy new year! I added the release dates below. Some of the released inmates were turned over to another agency after leaving our facility." Below that is the previous email from Mr. Manuel to [REDACTED], with what Mr. Manuel testified were red-type annotations made by [REDACTED] in her reply. The annotations state "Released 3/29/17. Booked 12/2/2017, released 12/12/2017. Booked 12/26/2017, released 12/27/2017."

The evidence on the record is insufficient to establish that Respondent was in fact incarcerated during the alleged fraud period. The hearsay statement from [REDACTED] in her email to Mr. Manuel and Mr. Manuel's testimony regarding that email provide the only support on this record to conclude that Respondent was incarcerated at any point in time in 2017. The Department could have obtained much more reliable information to confirm Respondent's incarceration dates in order to meet its burden of proving by clear and convincing evidence that Respondent was incarcerated during the alleged fraud period. The evidence presented by the Department was neither clear nor convincing. The e-mail and Mr. Manuel's testimony are not sufficient to establish by clear and convincing evidence that Respondent was in fact incarcerated. As the Department failed to establish Respondent was incarcerated, it necessarily has failed to meet its ultimate burden of proof in this matter. Thus, Respondent did not commit 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, pp. 15-16. In general, clients are disqualified 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. 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 did not establish that Respondent committed an IPV. Thus, Respondent is not subject to a disqualification.

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, the Department has not shown that Respondent received more benefits than he was entitled to receive. Thus, there was no OI 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. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits.
3. Respondent is not disqualified from receiving FAP benefits.

IT IS ORDERED that Respondent is not disqualified from receiving FAP benefits.

IT IS FURTHER ORDERED that the Department shall delete the FAP overissuance.



JM/dh

John Markey
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

Renee Olian
322 Stockbridge
Kalamazoo, MI 49001

Kalamazoo County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

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