



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED] TN [REDACTED]

Date Mailed: September 20, 2018
MAHS Docket No.: 18-005525
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. 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, 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 August 23, 2018, from Lansing, Michigan.

The Department was represented by Craig Curtiss, Regulation Agent of the Office of Inspector General (OIG). Mr. Curtis testified on behalf of the Department. The Department submitted 47 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 benefits for one year?

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 May 22, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving program benefits for one year. [Dept. Exh. 1, 4].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 46].
4. Respondent was aware of the responsibility to report all changes in 10 days as evidenced by her signature on her Assistance Application dated, [REDACTED], 2016. [Dept. Exh.].
5. Respondent indicated on her FAP application that she had been determined disabled on March 3, 2016. She also indicated that she was attending special education classes at Delton Kellogg and was enrolled in an Alcohol and Drug Treatment Program. Based on the evidence submitted, it is not apparent that Respondent suffers from a physical or mental impairment that would limit her understanding or ability to fulfill this requirement. [Dept. Exh. 16-18].
6. The Department's OIG alleges that the time period it was considering the fraud period was November 1, 2016 through February 28, 2017 (fraud period). [Dept. Exh. 1, 4].
7. A review of the evidence indicates the fraud period is November 1, 2016 through January 31, 2017, as the February 2017 disbursement was expunged. [Dept. Exh. 45-46].
8. During the fraud period of November 1, 2016, through January 31, 2017, Respondent was issued \$1,533.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was not entitled to any benefits during this time period. [Dept. Exh. 45-47].
9. Respondent received an overissuance in FAP benefits in the amount of \$1,533.00. [Dept. Exh. 47].
10. On April 14, 2017, Respondent submitted a Change Report reporting that as of May 20, 2016, she had moved and was living in [REDACTED] [REDACTED] [REDACTED] [Dept. Exh. 40].
11. On August 31, 2016, Respondent registered her vehicle with a [REDACTED] [REDACTED] [REDACTED] address. [Dept. Exh. 42].
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 to Respondent's last known address of [REDACTED] [REDACTED] [REDACTED]

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 Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - The total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program 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 Intentional Program Violation means an overissuance 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 (emphasis in original).

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 Respondent intentionally failed to timely report that she was living in Tennessee when she applied for FAP benefits from the State of Michigan. Respondent's signature on the FAP application dated [REDACTED], 2016, certifies that she was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. Because of Respondent's failure to report that she was living in Tennessee as of May 20, 2016, when she applied for Michigan FAP benefits on [REDACTED], 2016, she received an overissuance and the Department is entitled to recoup \$1,533.00.

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both

offenses occurred after August 22, 1996. BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee **only if** there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

As a result, Respondent is disqualified for one year.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018).

In the above captioned matter, Respondent received an overissuance of \$1,533.00 based on the falsification of her address on the Michigan FAP application dated July 15, 2016. Respondent admitted in her change report, dated April 14, 2017, that she was living in Tennessee as of May 20, 2016, thereby showing that she falsified the FAP application when she reported that she was living in Grand Rapids, Michigan.

DECISION AND ORDER

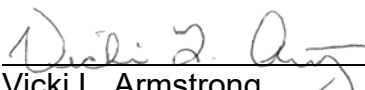
Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, this Administrative Law Judge concludes that:

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 \$1,533.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,533.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for a period of one year.

VLA/nr



Vicki L. 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

DHHS

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Kent County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED] TN
[REDACTED]