



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: August 9, 2018
MAHS Docket No.: 18-006497
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

**HEARING DECISION FOR CONCURRENT BENEFITS
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 August 9, 2018, from Lansing, Michigan. The Department was represented by Nicole Heinz-Hosking, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

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 [REDACTED], 2017, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, p. 10-29.
2. In the application Respondent submitted on [REDACTED], 2017, Respondent acknowledged receipt of an information booklet containing Things You Must Do and Important Things to Know, which instructed Respondent to report all changes

which could affect his eligibility for assistance to the Department within 10 days of the date of the change. Exhibit A, p. 29.

3. Respondent did not have any physical or mental impairment which would have limited his understanding or his ability to fulfill his reporting requirement.
4. In January of 2018, Respondent moved to Tennessee and started receiving food assistance benefits from the State of Tennessee.
5. On January 7, 2018, Respondent began using his FAP benefits exclusively in Tennessee. Respondent continued to use his FAP benefits exclusively in Tennessee through May 2018. Exhibit A, p. 32-33.
6. Respondent did not report to the Department that he moved or that he was receiving food assistance benefits from the State of Tennessee.
7. The Department and the State of Tennessee issued food assistance benefits to Respondent concurrently from January 2018 through February 2018.
8. The State of Tennessee issued Respondent a total of \$284.00 in food assistance benefits for the months of January and February of 2018. Exhibit A, p. 35.
9. The Department issued Respondent a total of \$770.00 in FAP benefits from January 2018 through May 2018. Exhibit A, p. 37.
10. The Department received an alert that Respondent was receiving benefits from another state concurrently with the FAP benefits issued by the Department. Exhibit A, p. 30.
11. The Department conducted an investigation of Respondent's case and determined that Respondent received benefits from the Department and the State of Tennessee concurrently. The Department determined that it overissued \$960.00 in FAP benefits to Respondent from January 2018 through February 2018.
12. On June 25, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, p. 1.
13. The OIG requested Respondent be disqualified from receiving program benefits for 10 years for an IPV involving the concurrent receipt of benefits.
14. A notice of hearing was mailed to Respondent at his last known address and it 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.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 1, 2018), p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, Respondent received more benefits than he was entitled to receive. Only a resident of Michigan is eligible for FAP benefits issued by the Department. BEM 220 (January 1, 2016), p. 1. Respondent was not a Michigan resident as of January 2018 when he moved to Tennessee. Thus, Respondent was not entitled to the Michigan FAP benefits he received in January 2018 and the months thereafter. Respondent received a total of \$770.00 in Michigan FAP benefits from January 2018 through May 2018, so his total overissuance is \$770.00.

The Department requested recoupment of a \$960.00 overissuance, but the Department did not present any evidence to establish that Respondent received FAP benefits totaling \$960.00 that he was not entitled to receive. The only evidence the Department presented was the benefit issuance summary showing that he was issued a total of \$770.00 in FAP benefits from January 2018 through May 2018.

Intentional Program Violation

An IPV involving the concurrent receipt of benefits exists when the client made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (January 1, 2018), 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 (January 1, 2016), p. 1; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (January 1, 2018), p. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent moved to Tennessee in January 2018 and failed to report it to the Department. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation regarding his residence to obtain benefits concurrently from the Department and another state because Respondent knew or should have known that the Department would have stopped his benefits had he reported that he moved out of state. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

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. 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, Respondent committed an IPV involving the concurrent receipt of benefits because Respondent claimed and received FAP benefits from the Department and the State of Tennessee concurrently. Therefore, Respondent is subject to a ten-year disqualification for an IPV involving the concurrent receipt of benefits.

DECISION AND ORDER

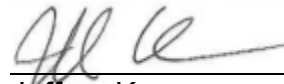
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$770.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$770.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of 10 years.

JK/nr



Jeffrey Kemm
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

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI
48911

Ingham 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]
[REDACTED], TN
[REDACTED]