



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 21, 2018
MAHS Docket No.: 18-006682
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 Regulations, particularly 7 CFR 273.16. After due notice, a telephone hearing was held on August 16, 2018, from Lansing, Michigan. The Department was represented by Joseph Gregurek, 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], 2016, Respondent applied for food assistance from the State of Florida. Respondent reported his address was in Florida. Exhibit A, p. 23-26.
2. On [REDACTED], 2016, Respondent applied for assistance from the Department, including FAP benefits. Respondent reported his address was in Michigan. Exhibit A, p. 12-22.

3. In the application Respondent submitted on [REDACTED], 2016, the Department asked Respondent if he was “getting other FS benefits” and Respondent answered “No.” Exhibit A, p. 15-16.
4. Respondent did not have any physical or mental impairment which would have limited his understanding or his ability to provide true and complete information.
5. The Department and the State of Florida issued food assistance benefits to Respondent concurrently from November 2016 through May 2017. Exhibit A, p. 27-29 and 33-34.
6. Respondent did not report to the Department that he moved or that he was receiving food assistance benefits from another state.
7. The Department conducted an investigation of Respondent’s case and determined that Respondent received benefits from the Department and the State of Florida concurrently. The Department determined that it overissued \$166.00 in FAP benefits to Respondent from September 2016 through June 2017. Exhibit A, p. 32.
8. On July 12, 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.
9. The OIG requested Respondent be disqualified from receiving program benefits for 10 years for an IPV involving the concurrent receipt of benefits.
10. 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, 2016), 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, the Department did not present sufficient evidence to establish that Respondent received more benefits from the Department than he was entitled to receive.

An individual cannot receive FAP benefits from more than one state for any month. BEM 222 (July 1, 2013), p. 3. Here, Respondent received FAP benefits from the Department and the State of Florida from November 2016 through May 2017, so Respondent received FAP benefits from more than one state for those months. Therefore, Respondent was ineligible for benefits from either the Department or the State of Florida. The Department alleged that Respondent was not eligible for benefits from the Department (presumably because Respondent was not a resident of Michigan), but the Department did not present sufficient evidence to establish that Respondent was not eligible for benefits from the Department.

Only a Michigan resident is eligible for Michigan issued FAP benefits. BEM 220 (January 1, 2016), p. 1. Here, it appears that Respondent was a Michigan resident while he was receiving FAP benefits from the Department. Respondent did not submit an application for assistance to the Department until months after he had applied with Florida, so the timing of his application was indicative of a move rather than a misrepresentation. When the Department issued FAP benefits to Respondent, he used his EBT card in Michigan for every transaction except for a few he made in New York in March 2017. Thus, Respondent's application and EBT activity were consistent with a Michigan resident. Respondent was eligible for FAP benefits issued by the Department while he was a resident of Michigan.

(The Department presented a CLEAR report, but it was not considered because it is compiled of hearsay and is not a reliable piece of evidence).

Intentional Program Violation

An IPV involving the concurrent receipt of benefits exists when the client made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 1, 2015), 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 not met its burden. The Department did not present sufficient evidence to establish that Respondent misrepresented his identity or residence to the Department in order to receive multiple FAP benefits simultaneously. Based on the evidence presented, it appears that Respondent misrepresented information to the State of Florida rather than the Department. Since there is no evidence Respondent misrepresented information to the Department, Respondent cannot be disqualified by the Department.

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 is not disqualified from receiving FAP benefits because there is no evidence she committed an 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. Respondent did not receive an overissuance of FAP benefits that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall not be disqualified from FAP benefits.

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

Lynne Greening
2700 Baker Street
PO Box 4290
Muskegon Heights, MI
49444

Muskegon 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]
MI