



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED] IN [REDACTED]

Date Mailed: September 19, 2018
MAHS Docket No.: 18-006800
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on August 23, 2018 from Lansing, Michigan.

The Department was represented by Craig Curtiss of the Office of Inspector General (OIG). Mr. Curtiss testified on behalf of the Department. The Department submitted 71 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 FAP benefits for one year?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's Office of Inspector General filed a hearing request on July 3, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an Intentional Program Violation.
2. Respondent received Michigan FAP benefits in March 2015 through August 2015; January 2017 through June 2017; and January 2018 through March 2018. [Dept. Exh. 66-69].
3. The Office of Inspector General has requested that Respondent be disqualified from receiving Food Assistance Program benefits for one year. [Dept. Exh. 1, 4].
4. On [REDACTED], 2015, Respondent applied for Michigan FAP benefits and indicated he was homeless on the Assistance Application. [Dept. Exh. 12-23].
5. On [REDACTED] 2017, Respondent applied for Michigan FAP benefits and reported he was homeless. [Dept. Exh. 24-35].
6. On [REDACTED], 2017, Respondent submitted an Assistance Application for FAP benefits and reported he was homeless. [Dept. Exh. 36-47].
7. On June 5, 2017, the Department received information from the State of Indiana, reporting Respondent's FAP case closed in Indiana on May 31, 2016. The attached report indicated Respondent received FAP benefits from the State of Indiana from February through March 2015, and January 2016 through May 2016. [Dept. Exh. 62-65].
8. On [REDACTED], 2017, Respondent applied for FAP benefits and indicated that he was homeless. [Dept. Exh. 48-].
9. Respondent was aware of the responsibility to notify the Department that he was receiving benefits from another state, as evidenced by his signature on the Assistance Applications dated March 12, 2015. [Dept. Exh. 23].
10. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 16, 28, 39-40, 51-52].
11. The OIG indicates that the time period they are considering the fraud period is March 13, 2015 through March 31, 2018. [Dept. Exh. 4].
12. The OIG submitted evidence indicating the only month Respondent received concurrent benefits from Indiana and Michigan was March 2015. Respondent's March 12, 2015, FAP application, led to Michigan FAP benefits issued from March 2015 through August 2015. [Dept. Ex. 62, 71].

13. During the alleged fraud period of March 2015 through August 2015, Respondent was issued \$1,088.00 in FAP benefits from the State of Michigan. [Dept. Exh. 4, 71].
14. A notice of hearing was mailed to Respondent at the last known address in Indianapolis, Indiana, and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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 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 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 record evidence clearly shows that Respondent was receiving FAP benefits from the State of Indiana from February 2015 through March 2015 and January 2016 through May 2016. (See Dept. Exh. 62). The Department has established by clear and convincing evidence that Respondent intentionally withheld information that he was receiving FAP benefits from the State of Indiana when he applied for Michigan FAP benefits on March 12, 2015, for the purpose of establishing Michigan FAP benefits. As a result of applying for Michigan FAP benefits on March 12, 2015, Respondent received Michigan FAP benefits from March 2015 through August 2015. (See Dept. Exh. 66-67, 71). No evidence was presented by the Department indicating Respondent received FAP benefits from Michigan in 2016, when he received FAP benefits in Indiana. Further, Respondent did not receive FAP benefits from Indiana in 2017 or 2018. Therefore, the Department has established an Intentional Program Violation for the months of March 2015 through August 2015.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p 15. 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 17.

Clients who commit an Intentional Program Violation are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to Medicaid or the Food Assistance Program. BAM 720, p 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 18.

In this case, Respondent received concurrent FAP benefits from the state of Michigan and Indiana from March 2015, however Respondent's [REDACTED], 2015 FAP application led to the issuance of Michigan FAP benefits from March 2015 through August 2015. Respondent is disqualified from receiving Food Assistance Program benefits for one year as requested by the OIG.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1 (1/1/2016).

In this case, Respondent received concurrent benefits from the states of Indiana and Michigan in March 2015. Respondent's signature on the Michigan FAP application dated March 12, 2015, certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. Because of Respondent's failure to report that he was receiving FAP benefits in Indiana at the time of his March 12, 2015 Michigan FAP application, he received a FAP overissuance from the State of Michigan and the Department is entitled to recoup \$1,088.00 for the fraud period of March 2015 through August 2015.

DECISION AND ORDER

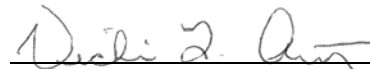
Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, this Administrative Law Judge concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive a Food Assistance Program overissuance of benefits in the amount of \$1,088.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,088.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 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], IN