



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 12, 2018
MAHS Docket No.: 18-006972
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 October 9, 2018, from Lansing, Michigan. The Department was represented by Scott Matwiejczyk, 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). During the hearing, 165 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-165.

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 submitted an application for FAP benefits to the state of Kansas. On that application, Respondent indicated that he lived in Kansas

and that he is not receiving any food assistance in any other states. Exhibit A, pp. 50-75.

2. Kansas approved Respondent's FAP application and issued Respondent FAP benefits each month from March 2016 through July 2017. Exhibit A, p. 49.
3. On [REDACTED], 2017, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 12-42.
4. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, pp. 24-25.
5. "Things You Must Do" advised Respondent that he was required to report any changes in address or moving out of the state of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, p. 25.
6. Respondent was also advised on the application that if he was found to have lied about where he lives in order to receive benefits on two or more cases at the same time, he would be disqualified from receiving FAP benefits for ten years. Exhibit A, p. 33.
7. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
8. On Respondent's application for FAP benefits, Respondent indicated that he lived at an address in Grand Rapids, Michigan. Exhibit A, p. 14.
9. Respondent's Michigan FAP application was approved, and the Department issued Respondent FAP benefits each month from February 2017 through December 2017. Exhibit A, pp. 126-128.
10. From February 17, 2017, through February 21, 2017, Respondent's FAP benefits were exclusively used in Michigan. Exhibit A, p. 43.
11. Respondent's Michigan FAP benefits were not redeemed again until Respondent made a March 16, 2017, purchase in Kansas. From March 16, 2017, through May 24, 2017, Respondent's Michigan FAP benefits were used exclusively in Kansas. Exhibit A, pp. 43-44.
12. After May 24, 2017, Respondent's Michigan FAP benefits were not used again until June 19, 2017, and June 22, 2017, when they were used in Texas. Exhibit A, pp. 43-45.

13. On July 1, 2017, Respondent submitted to the state of Texas an application for FAP benefits. Exhibit A, pp. 77-101.
14. On the Texas application, Respondent indicated that he lived in Texas and was not receiving FAP benefits from any other state. Exhibit A, pp. 79, 84.
15. Texas approved Respondent's FAP application and issued Respondent FAP benefits each month from July 2017 through at least May 2018. Exhibit A, pp. 111-112.
16. From the time Respondent submitted the Texas FAP application in July 2017 through at least December 23, 2017, Respondent's Michigan FAP benefits were used exclusively in Texas. Exhibit A, pp. 43-45.
17. On December 4, 2017, Respondent submitted to the state of Texas a change of address form showing that his address was changing from one Texas address to another Texas address. Included with the change report was a copy of a lease showing Respondent living at a Texas residence until at least November 2018. Exhibit A, pp. 102-110.
18. Just ten days later, Respondent submitted to the Department a December 14, 2017, application for FAP and other benefits. Exhibit A, pp. 131-165.
19. On that application, Respondent indicated to the Department that he lived in Grand Rapids, Michigan and that he was not receiving FAP benefits from any other state. Exhibit A, pp. 133-134.
20. The Department's OIG filed a hearing request on June 19, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by concurrently collecting FAP benefits from Michigan and another state (or two).
21. This was Respondent's first alleged IPV.
22. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of ten years.
23. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2017, through December 31, 2017 (fraud period), during which Respondent was issued \$1,465 in FAP benefits.
24. 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.

The Department's position in this matter is that Respondent's repeated misrepresentation of his residency while concurrently collecting benefits in Michigan and Kansas and then Michigan and Texas constituted an IPV for which the penalty is a ten-year disqualification from receiving FAP benefits.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1. Furthermore, a persona cannot receive FAP benefits in more than one state for any month. BEM 222 (October 2016), p. 3. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (October 2016), p. 1.

In this case, the Department showed by clear and convincing evidence that Respondent was not a Michigan resident for the entire period from March 2017 through December 2017. Furthermore, the Department has shown by clear and convincing evidence that Respondent received FAP benefits from Kansas for each month from March 2016 through July 2017 and from Texas for each month from July 2017 through at least May 2018. Thus, for each month the Department issued Respondent Michigan FAP benefits from February 2017 through December 2017, Respondent was already receiving FAP benefits from at least one other state, rendering Respondent ineligible for the Michigan FAP benefits.

However, because Respondent concealed the fact that he was receiving benefits from another state from the Department, the Department issued Respondent monthly FAP benefits totaling \$1,465 from February 2017 through December 2017. As Respondent was ineligible to receive those benefits, they are considered an OI.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate

information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 2016) 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; 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, the Department has met its burden. The evidence shows that Respondent engaged in a nationwide scheme to defraud the people of Michigan, Kansas, and Texas. On each of the applications he filled out, whether in Michigan, Kansas, or Texas, Respondent certified that his statements were true and acknowledged the penalties for making false statements. Yet on at least three of those applications, Respondent made clear misrepresentations regarding his residency and receipt of benefits from other states. Just ten days after submitting to the state of Texas a lease showing he was slated to remain in Texas for at least another year, Respondent submitted to the Department an application showing he lived in Michigan and was not receiving benefits from any other state. Clearly, Respondent was simply attempting in a blatantly fraudulent manner to get as many benefits from as many states as he could. Respondent did not appear at the hearing to provide any explanations for his dishonest and fraudulent statements. 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, pp. 15-16. In general, clients are disqualified for standards 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. Clients are disqualified for a period of ten years for concurrent receipt of benefits if fraudulent statements were made regarding identity or residency. BAM 720, p. 16.

In this case, Respondent committed an IPV that resulted in concurrently receiving benefits from Michigan and another state. Respondent concurrently received benefits from Michigan and Kansas from February 2017 through July 2017 and from Texas from July 2017 through December 2017. Respondent made numerous fraudulent statements regarding his residency when filling out the paperwork required to obtain those benefits, including on the January 30, 2017, Michigan Food Assistance Program application and the December 14, 2017, Michigan Food Assistance Program application. Thus, Respondent is subject to a ten-year disqualification from receiving FAP 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 \$1,465 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
3. Respondent is subject to a ten-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$1,465 established in this matter less any amounts already recouped or collected.

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

JM/hb



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

DHHS

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED] MI [REDACTED]