



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], NY [REDACTED]

Date Mailed: October 12, 2018
MAHS Docket No.: 18-007246
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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, 60 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-60.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance (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 filed with the Department an application for FAP benefits. Exhibit A, pp. 11-42.

2. By signing the application, Respondent certified that she received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, pp. 24-25.
3. "Things You Must Do" advised Respondent that she 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, pp. 24-25.
4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
5. On Respondent's application for Michigan FAP benefits, Respondent indicated that she lived at an address in Grand Rapids, Michigan. Exhibit A, p. 13.
6. Respondent's application for Michigan FAP benefits was approved, and the Department issued Respondent FAP benefits each month from October 2016 through June 2017. Exhibit A, pp. 58-60.
7. Starting in February 2017, the state of New York began issuing Respondent FAP benefits. Respondent received FAP benefits from New York each month from February 2017 through at least June 2017. Exhibit A, p. 49.
8. Thus, for February 2017, through June 2017, Respondent received FAP benefits from both Michigan and New York. Exhibit A, pp. 49, 58-60.
9. From February 13, 2017, through April 25, 2017, Respondent's Michigan FAP benefits were used exclusively in New York, with the exception of one purchase made in Pennsylvania. Exhibit A, pp. 55-57
10. The Department's OIG filed a hearing request on July 13, 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 New York.
11. This was Respondent's first alleged IPV.
12. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year.
13. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2017, through March 31, 2017 (fraud period), during which Respondent was issued \$388 in FAP benefits.

14. 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 failure to report her move out of state while continuing to use her Michigan issued FAP benefits while also receiving FAP benefits from the other state amounted to an intentional program violation (IPV) with respect to FAP.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1. Furthermore, a person 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 a New York resident as of February 2017, at the latest. This conclusion is based on the fact that Respondent's Michigan FAP benefits were exclusively used in New York and a neighboring state starting February 13, 2017, and she was collecting FAP benefits from New York. Thus, because Respondent was no longer a Michigan resident and was also collecting benefits in another state, Respondent was ineligible to receive Michigan benefits. However, because of Respondent's failure to report her move to New York, the Department issued her FAP benefits of \$388 for February and March 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. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she moved out of state within 10 days of the date she moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement. Further bolstering the conclusion that Respondent's actions were fraudulent is the fact that Respondent was using her EBT cards from both states for a period of time, sometimes on the same day.

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 New York from February 2017 through March 2017. Respondent, however, did not directly make any false statements regarding her residency or identity when filling out the paperwork required to obtain those benefits. She merely failed to report her change in residency to the Department. Thus, Respondent is not subject to a ten-year disqualification from receiving FAP benefits. However, she is subject to a one-year disqualification from receiving FAP benefits.

DECISION AND ORDER

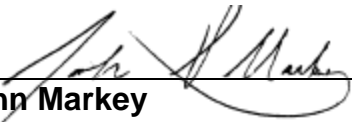
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$388 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 her FAP benefits.
3. Respondent is subject to a one-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 \$388 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 one year.

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]
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[REDACTED], NY [REDACTED]